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WHEN: September 13, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–077–2]

RIN 0579–AB17

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel. This action reduces the size of the areas that are regulated because of Karnal bunt in La Paz, Maricopa, and Pinal Counties of Arizona. We are also specifying that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action relieves restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt. These actions will not result in a significant risk of spreading Karnal bunt.

EFFECTIVE DATE: August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14 (referred to below as the regulations).

On April 18, 2000, we published in the **Federal Register** (65 FR 20770–20774, Docket No. 99–077–1) a proposal to amend the regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel and by specifying that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt.

We solicited comments concerning our proposal for 60 days ending June 19, 2000. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule releases certain areas in La Paz, Maricopa, and Pinal Counties of Arizona from their designation as regulated areas for Karnal bunt. This means that wheat producers in newly released areas will be able to move their wheat, including grain and commercial wheat seed, without restrictions. This rule also specifies that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action relieves restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this action, which is set forth below. The analysis addresses the effects on small entities, as required by the Regulatory Flexibility Act, and provides cost-benefit analysis.

We are amending the Karnal bunt regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel. This action reduces the size of the areas that are regulated because of Karnal bunt in La Paz, Maricopa, and Pinal Counties of Arizona. We are also specifying that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action relieves restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt.

Regulated Areas in Arizona

This rule will reduce regulated acreage in La Paz, Maricopa, and Pinal Counties of Arizona by about 131,000 acres, reducing the regulated acreage in Arizona as a whole by about one-third, from 389,000 acres to 258,000 acres. The total regulated agricultural acreage in Arizona, California, New Mexico, and Texas will decline by about 25 percent, from approximately 484,000 acres to 353,000 acres.

This change will benefit an estimated five wheat producers operating in the areas that are no longer regulated. These five producers will benefit because they will be able to move their wheat without restriction. Wheat grain may move from a regulated area only if it tests negative for bunted kernels, and commercial wheat seed may not move from a regulated area.

However, the benefits for these producers are not likely to be significant for two reasons. First, grain is tested for Karnal bunt at no cost to producers in all regulated areas. For producers affected by this change, the elimination of the testing requirement removes an

inconvenience only, not a financial burden. Second, very little commercial wheat seed is, or is expected to be, grown in the areas that are removed from regulation. Because of that, the elimination of the restriction on moving commercial seed will have only a minimal economic effect on producers in the affected areas.

It is possible that, by giving affected producers new status as deregulated growers, the rule will serve to enhance the perception of the quality of the producers' wheat crop. This could, in turn, lead to higher wheat prices. However, even if producers were to benefit from higher prices for their wheat, those prices are not likely to increase significantly.

Mechanized Harvesting Equipment

The change to the requirements for cleaning and disinfecting mechanized harvesting equipment will primarily benefit custom combine harvesters, who routinely move their machines into and out of regulated areas in the course of harvesting wheat for multiple producers. They will benefit because they will no longer be required to clean and disinfect their combines prior to moving them out of the regulated area, as long as the machines had not been used to harvest host crops that tested positive for Karnal bunt.

Currently, there are about 67 harvesters, including both custom operators and producers who use their own combines, operating 124 combines in regulated areas. Many of these 67 harvesters could benefit from this rule. However, the exact number who will benefit—and the extent to which each will benefit—is unknown, since the information needed to make that determination (i.e., the operating characteristics for each of the harvesters) is not available. It is not uncommon, for example, for custom harvesters to move the same combine into and out of the regulated area several times in the same crop season, a situation that occurs when cutting wheat that matures at different times.

The regulations allow for several different cleaning methods, but most combine operators choose a steam treatment, which takes a minimum of 8 hours and costs from about $500 to $600 per cleaning. In addition to the cost of cleaning itself, combine operators also incur an indirect cost of approximately $2,000 for each steam cleaning, representing lost income associated with the cleaning down time. For a combine harvester, therefore, each steam cleaning can cost up to about $2,600.

The economic effect of the change to the regulations will vary depending on the operator's business practices and other factors. Incurring the cost of five cleanings per year for certain individual operators is not uncommon, although some operators must clean their equipment more than five times and some fewer than five times. Certain operators in the regulated area will not benefit at all from this rule because they do not move their equipment from regulated areas. However, if a custom harvester avoids the cost of five cleanings per year as a result of this rule, the savings will amount to approximately $13,000.

Effects on Small Entities

Virtually all of the wheat producers and firms that will be affected by this rule are likely to be categorized as small according to the Small Business Administration (SBA) size classification. Economic effects resulting from this rule will, therefore, largely affect small entities.

We assume that all the wheat producers that could be affected by this rule are small entities. We based this assumption on composite data for providers of the same and similar services. There were a total of 6,135 farms in Arizona in 1997. Of those farms, which include wheat farms, 89 percent had annual sales of less than $0.5 million, the SBA's small entity threshold for wheat farms. However, for the reasons discussed above, we do not expect this rule to have a significant economic effect on these entities.

The combine operators that could be affected by the changes to the regulations are also all assumed to be small entities. In 1996, there were 282 U.S. firms primarily engaged in mechanical harvesting and related activities (SIC 0722), including combining of crops. Of these firms, 95 percent (or 268) had less than $5.0 million in annual sales, the SBA's small entity threshold for businesses in that SIC category. Further, in 1996, the per firm average sales for all of the 268 firms in SIC 0722 that met the SBA's definition of a small entity was $551,571. Therefore, based on our calculation of $13,000 in potential savings for many of these firms, the economic benefits of this proposal will represent 2 percent of annual sales, which will not amount to a significant economic effect on these firms.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.89–2, paragraph (i) is revised to read as follows:

§ 301.89–2 Regulated articles.

* * * * *

(i) Mechanized harvesting equipment used in the production of wheat, durum wheat, and triticale that test positive from Karnal bunt;

* * * * *

3. In § 301.89–3, paragraph (f), the entry for Arizona is revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(f) * * *

ARIZONA

La Paz County. Beginning at the southeast corner of sec. 33, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the west edge of sec. 26, T. 6 N., R. 22 W.; then north to the northwest corner of sec. 26, T. 6 N., R. 22 W.; then east

to the northeast corner of sec. 27, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 10, T. 5 N., R. 21 W.; then west to the southwest corner of sec. 10, T. 5 N., R. 21 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 36, T. 7 N., R. 21 W.; then west to the southwest corner of sec. 31, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 7, T. 7 N., R. 21 W.; then east to the northwest corner of sec. 8, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 5, T. 7 N., R. 21 W.; then east to the northwest corner of sec. 4, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 33, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 34, T. 8 N., R. 21 W.; then south to the northeast corner of sec. 3, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 2, T. 7 N., R. 21 W.; then south to the northeast corner of sec. 11, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 12, T. 7 N., R. 21 W.; then south to the point of beginning.

Maricopa County. Beginning at the southeast corner of sec. 12, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 7, T. 6 S., R. 6 W.; then north to the northwest corner of sec. 7, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 2, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 14, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 18, T. 5 S., R. 6 W.; then south to the southeast corner of sec. 19, T. 5 S., R. 6 W.; then east to the northeast corner of sec. 25, T. 5 S., R. 6 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 14, T. 1 S., R. 4 W.; then west to the southwest corner of sec. 14, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the northeast corner of sec. 14, T. 1 N., R. 4 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 6, T. 1 S., R. 2 W.; then west to the southwest corner of sec. 5, T. 1 S., R. 3 W.; then north to the northwest corner of sec. 17, T. 1 N., R. 3 W.; then east to the northeast corner of sec. 18, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 8, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 8, T. 1 N., R. 2 W.; then south to the southeast corner of sec. 32, T. 1 N., R. 2 W.; then west to the northeast corner of sec. 6, T. 1 S., R. 2 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 28, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 30, T. 1 S., R. 2 E.; then north to the southwest corner of sec. 18, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the southwest corner of sec. 2, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 4, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 4, T. 1 S., R. 1 E., then west to the southwest corner of sec. 33, T. 1 N., R. 1 W.; then north to the southwest corner of sec. 9, T. 1 N., R. 1 W.; then west to the southwest corner of sec. 12, T. 1 N., R. 2 W.; then north to the southwest corner of sec. 25, T. 2 N., R. 2 W.; then west to the southwest corner of sec. 27, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 3, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 23, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northwest corner of sec. 18, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 13, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 12, T. 1 S., R. 2 E.; then west to the southeast corner of sec. 9, T. 1 S., R. 2 E.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 34, T. 2 N., R. 5 E.; then west to the southwest corner of sec. 31, T. 2 N., R. 5 E.; then north to the northwest corner of sec. 7, T. 2 N., R. 5 E.; then east to the northeast corner of sec. 10, T. 2 N., R. 5 E.; then south to the point of beginning; and

Beginning at the intersection of the Maricopa/Pinal County line and the southwest corner of sec. 31, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 31, T. 2 S., R. 5 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 4 E.; then north to the southwest corner of sec. 13, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of sec. 3, T. 2 S., R. 4 E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northwest corner of sec. 34, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 22, T. 1 S., R. 5 E.; then east to the northwest corner of sec. 20, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 8, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 7, T. 1 S., R. 7 E.; then south to the southeast corner of sec. 31, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 5, T. 2 S., R. 7 E.; then south to the southeast corner of sec. 5, T. 2 S., R. 7 E.; then east to the Maricopa/Pinal County line; then south and west along the Maricopa/Pinal County line to the point of beginning.

The following individual fields in Maricopa County are regulated areas:

301060505
301060506
301060601
301060602
301060603
301060604
301102505
301102506
303111502
303111503
303113002
304031904
304031906
304073004
304073005
304073010
304081410
304081413
304081415
304081417
304081505
304081506
304082202
304082302
304082303
304082607
304082703
306013222
306013231
306020404
306020501
306020601
306020623
316123301
316123302
316123303
316131901
316131904
316132302
316132604

Pinal County. Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 7, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 8, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 8, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 16, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 28, T. 2 S., R. 8 E.; then west to the southeast corner of sec. 29, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 32, T. 2 S., R. 8 E.; then west to the Maricopa/Pinal County line; then north along the Maricopa/Pinal County line to the point of beginning; and

Beginning at the intersection of the Maricopa/Pinal County line and the northeast corner of sec. 5, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 32, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 34, T. 3 S., R. 5 E.; then north to the southwest corner of sec. 3, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 6, T. 3 S.,

R. 5 E.; then north to the Maricopa/Pinal County line; then east along the Maricopa/Pinal County line to the point of beginning; and

Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 5, T. 6 S., R. 3 E.; then north to the southwest corner of sec. 28, T. 5 S., R. 3 E.; then west to the southwest corner of sec. 25, T. 5 S., R. 2 E.; then north to the southwest corner of sec. 24, T. 5 S., R. 2 E.; then west to the southwest corner of sec. 23, T. 5 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 36, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 29, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 21, T. 4 S., R. 4 E.; then south to the northeast corner of sec. 4, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 3, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 22, T. 5 S., R. 4 E.; then west to the southeast corner of sec. 21, T. 5 S., R. 4 E.; then south to the point of beginning.

The following individual fields in Pinal County are regulated areas:

307012207
308102604
308102605
309021801
309021804
309021812
309031304
309033507
309042544
309042545
309042601
309042607
309042619
309042620
309042621
309050104
309050109
309050122
309050207
309050209

Yuma County. The following individual fields in Yuma County are regulated areas:

321010208
321010210
321010211
321010224
321010301
321010302
321011103
321033501
321033502
321033503
321033516
321033517
321033518
321033519
321040405
321040911
321040912
321040915
321040917
321040918
321040921
321040922
321041903
321041904
321041908
321041919
321042903
323030401
323030402
323030403
323030404
323030405
323030406
323030501
323030502
323030512
323030513
323030514
323030515
323030521

* * * * *

4. In § 301.89–12, paragraph (a) is revised to read as follows:

§ 301.89–12 Cleaning and disinfection.

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt and seed conditioning equipment that has been used in the production of any host crops must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area.

* * * * *

Done in Washington, DC, this 15th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21172 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AG24

Handling Payments From the Farm Service Agency (FSA) to Delinquent FSA Farm Loan Program Borrowers

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The issuing USDA agencies are revising their regulations for the use of administrative offset to collect delinquent debts due under programs formerly administered by the Farmers Home Administration (FmHA). This rule finalizes an interim rule on this subject which was published in the **Federal Register** on August 1, 1997. This action eliminates the provisions in the regulation setting out separate set-off regulations of the former Farmers Home Administration and provides that the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and Farm Service Agency (FSA), Farm Loan Programs (FLP) will adhere to the requirements in the United States Department of Agriculture (USDA) administrative offset regulations. This rule eliminates the requirement that a borrower's account be accelerated prior to offset of payments from a Federal agency to delinquent borrowers. This rule will improve collection procedures through an increase in the use of administrative offset to collect delinquent debts owed the Federal Government. The changes primarily affect Farm Loan Program (FLP) borrowers of the FSA. The Agencies' Federal salary offset regulations are not revised by this rule.

EFFECTIVE DATE: October 20, 2000.

FOR FURTHER INFORMATION CONTACT: Jerry P. Wishall, Senior Loan Officer, Farm Loan Programs Loan Servicing Division, USDA/FSA/LSPMD/STOP 0523, 1400 Independence Avenue, SW., Washington, D.C. 20250–0523, telephone (202) 720–1651, facsimile (202) 690–0949 or (202) 720–7686, e-mail: Jerry Wishall@wdc.usda.fsa.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs as found in the Catalog of Domestic Assistance to which this rule may apply are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low to Moderate Income Housing Loans

10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.435 Certified Mediation Program

Executive Order 12372

This activity is subject to provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials under the following numbers:

10.405 Farm Labor Housing Loans and Grants
10.407 Farm Ownership Loans
10.415 Rural Rental Housing Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.435 Certified Mediation Program

The Agency has complied with the intergovernmental consultation requirements. The following programs or activities are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials, under the following numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans

Environmental Evaluation

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the issuing agencies that this action is not a major Federal action significantly affecting the environment and, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G, an Environmental Impact Statement has not been prepared.

Executive Order 12988

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

Regulatory Flexibility Act

The Farm Service Agency (FSA) certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, (5 U.S.C. 601). No actions are being taken under this rule that would favor large entities over small entities. According to the 1997 Census of Agriculture, 1.9 million farmers or over 99 percent of all farms in the United States are small entities as defined by the Small Business Administration (SBA). Under the SBA definition, few if any large entities are operators of family-sized farms who would be eligible for FSA credit. This rule is expected to result in the offset of payments from an average of approximately 4,000 borrowers per year, which is less than .2 percent of the 1.9 million small farmers. Also, this rule requires small entities to do no more than large entities to participate in the affected programs. Therefore, a Regulatory Flexibility Analysis has not been prepared.

This rule does not affect administrative offset of direct single family housing borrowers who have loans from the RHS. Administrative offsets for these borrowers was the subject of a prior rule making on November 22, 1996 (61 FR 59762). This prior rulemaking adopted the offset procedures for direct single family housing loans that are being adopted in the current rule for debts due to the Agencies.

Paperwork Reduction Act

The amendments to 7 CFR part 1951, subpart C, contained in this rule involve a change in existing information collection requirements that was approved by OMB under the provisions of 44 U.S.C. chapter 35 and assigned OMB control number 0575–0119. A proposed rule containing an estimate of the burden impact of this rule was published on August 30, 1996 (61 FR 45907), and updated information was published in the interim rule on August 1, 1997 (62 FR 41794). No comments on the burden estimate were received.

National Partnership for Reinventing Government

This regulatory action is being taken as part of the National Partnership for the Reinvention of Government to eliminate unnecessary regulations and improve those that remain in force.

Unfunded Mandates

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, agencies must prepare a written statement, including a cost-benefit assessment, before promulgating a notice of proposed rule making that includes any 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 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies 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 rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion of the Final Rule

This rule involves the credit programs formerly administered by FmHA. The Department of Agriculture Reorganization Act of 1994 authorized the Secretary to abolish FmHA and on October 20, 1994, FmHA was abolished and its functions were transferred to the USDA Agencies that are issuing the rule.

FSA took the action contained in this rule for several reasons. Most importantly, the change was made to increase the tools available to FSA's Farm Loan Programs (FSA, FLP) to collect delinquent FLP debts owed to the Government. Administrative offset was underutilized because the administrative offset regulations applicable to FSA's FLP prior to the August 1, 1997, interim rule required that a borrower's promissory note be accelerated before offset could be used to collect the debt. This resulted in the anomaly of USDA paying a delinquent debtor from one USDA program while at the same time it was trying to collect its delinquent debt. It restricted FSA's ability to collect from borrowers that defaulted on FLP debt by delaying the offset against FSA and Commodity Credit Corporation (CCC) program payments such as those derived from the Conservation Reserve Program (CRP), Production Flexibility Contracts (PFC), Livestock Indemnity Payments (LIP), Emergency Conservation Program (ECP), Environmental Quality Incentive Program (EQIP), Agriculture Conservation Program (ACP), or Stewardship Incentive Program (SIP).

Because of the procedures required for FSA to accelerate notes, a borrower's FSA loan may have been in default for years while the borrower continued to receive program payments from FSA. For example, CCC records indicate that in fiscal years 1994 and 1995, 711 CRP contract payments totaling over $5.5 million were made to seriously delinquent FSA borrowers that were not subject to offset. It is fiscally irresponsible for a Federal agency to continue making substantial program payments to someone who is seriously delinquent on his or her Government debts.

Also, the Agencies made this change because the administrative offset provisions of the Federal Claims Collection Act (31 U.S.C. 3716) (DCA), which were amended by the Debt Collection Improvement Act (DCIA) of 1996 (Chapter 10 of Pub. L. 104–134, April 26, 1996), establish the requirement that Federal agencies must attempt administrative offset to collect delinquent debts soon after the debt becomes delinquent.

The Agencies made this change by removing a portion of the existing administrative offset regulation used by the Agencies when they were a part of FmHA. USDA has an existing administrative offset regulation at 7 CFR part 3, subpart B that satisfies the administrative offset needs of the Agencies and is consistent with the requirements of the DCA. Concerning FSA FLP borrowers, adoption of the departmental regulation and removal of the Agencies' regulation will also assist in efforts to streamline regulations and reduce paperwork by removing several pages of unnecessary regulations from chapter XVIII of the Code of Federal Regulations. This subpart contains provisions that are very similar to the previous administrative offset regulation of the former FmHA contained in 7 CFR part 1951, subpart C (1997 ed.), except it does not require a borrower's account to have been accelerated. Also, to further implement the provisions of the DCIA and the Department of Treasury regulations, ''Offset of Tax Refund Payments to Collect Past-Due Legally Enforceable Nontax Debt'', at 31 CFR part 285 (63 FR 46140) finalized on August 28, 1998, which require that the offset of Government payments, including Internal Revenue Service (IRS) tax refunds, be centralized in the Department of Treasury and made through the Treasury Offset Program (TOP) rather than the IRS, the Agency is removing 7 CFR 1951.121 through 1951.135.

These sections in part state that FLP borrowers will not be referred for I RS offset until either the borrower receives the required loan servicing notices under 7 CFR part 1951, subpart S, and all appeal rights have been exhausted, or the borrower's account has been accelerated. Language has been added to 7 CFR 1951.102 and 7 CFR 1951.106(b) to clarify when offset will be used to collect the delinquent debt of an individual FSA, FLP borrower when the FSA payment is made to an entity in which the FSA, FLP borrower is participating either directly or indirectly. Offset will be taken against the individual borrower's pro rata share of payments due any entity in which the borrower participates, either directly or indirectly, or when FSA, FLP has a legally enforceable right under state law, common law, or Federal law, including USDA regulations at 7 CFR 792.7(l) and 1403.7(q), to pursue the entity payment. Situations when this may occur are when the borrower has created a shell corporation before receiving an FSA, FLP loan or after receiving a loan, established an entity, or reorganized, transferred ownership of, or otherwise changed in some manner, the borrower's operation or the operation of a related entity for the purpose of avoiding payment of the claim or otherwise avoiding Agency regulations. Offset will also be taken against the borrower's pro rata share when assets used in the entity's operation include assets pledged as security without payment to the Agency or without Agency consent to the asset transfer. When payment is to be made to a corporation, which is the alter ego of the borrower, or payment is made to the individual members of the entity which includes a delinquent borrower, pro rata offset will also be taken.

These changes reflect FSA's and CCC's farm program policies as stated in the payment regulation at 7 CFR 792.7 and 1403.7. FSA, FLP had assumed that these policies already applied to FLP individual borrowers who created entities, transferred assets, ownership or otherwise reorganized to avoid repayment of their debt. However, several appeal decisions issued by USDA's National Appeals Division (NAD) to the contrary established the need to specifically adopt the requirements contained in 7 CFR 792.7 and 1403.7 and apply them to FSA, FLP delinquent borrowers. The Agency will provide the entity with appeal rights to the NAD as to the question of the debtor's interest in the entity when offsetting the program payments of delinquent borrowers.

Effect of National Appeals Division

Appeal rights through NAD will be offered in accordance with 7 CFR part 11 and in conjunction with the internal review process as outlined in the USDA offset regulations. The feasibility of an offset must be determined on a case-by-case basis; the practicality of the offset must be determined; borrowers must generally be given 30 days notice prior to offset, except in instances as allowed in 7 CFR part 3; a borrower has 20 days to request a meeting after receiving notice; the borrower may request a review of the offset by an Agency reviewing official, or can request an appeal through NAD, the borrower may review the Agencies records; and the borrower may reach a payment agreement with the FSA, FLP in lieu of the offset.

Discussion of Comments Received

This final rule considers the comments received on the interim rule published August 1, 1997 (62 FR 41794), with a comment period that ended September 30, 1997. The interim rule implemented the changes in a proposed rule published on August 30, 1996 (61 FR 45907), with a comment period ending September 16, 1996. Comments for the interim rule were received from 43 parties prior to expiration of the comment period. One comment was received 1 day after the deadline and was not formally considered, although it was similar to the other comments received. Comments were received from one United States Representative, 39 banks, one lender commenting as an individual, one state banking organization, one State Department of Agriculture, and a national banking association. Two comments were identical form letters. Four comments reiterated the same comments made by the national banking association. Two commenters, a lender commenting as an individual and a bank, praised the Agencies' efforts to collect from delinquent borrowers. They believe more aggressive collection action would help curb abuse of farm loans by farmers and bankers. They also believe that the Government should cease subsidizing bad or unlucky farmers; that bankers should not collateralize loans with Government subsidies; and that borrowers should be required to repay their loans. One commenter did not have a problem with FSA offsetting Government payments ahead of an assignment to a lender as this was no different than a mechanic's lien superseding a lien.

The respondents' comments are addressed as follows in an order based on the volume of responses received. Comments of a similar topic are grouped, paraphrased and addressed as one. General comments received regarding constitutionality, ethics, fairness and the general mission of the Agencies loan programs were considered and may be addressed in context.

Adverse Effect on Agriculture Lending Community and Restriction of Credit

Thirty comments were received from private lenders and banking organizations expressing concern about the potential negative impact of this rule due to a reduced availability of bank credit. These commenters indicated that this rule will result in a restriction on loans to farmers for the production of crops because many of these loans are dependent upon assignment of FSA program payments for repayment. The respondents suggest that a lender will deny credit to a farm borrower due to inadequate cash flow as a result of not being able to include FSA program payments in their annual cash flow projections. Commenters requested that the Agency honor an assignment or abide by Uniform Commercial Code (UCC) lien priorities on payments, regardless of the legal status of the borrower's government loan. Respondents suggested that if the Agency proceeds with this change, FSA, FLP should inform creditors and suppliers of the status of an FSA, FLP borrower's loans. Many of these commenters recommended the assignments be honored for at least the 1997 crop year.

One commenter indicated an inability to verify status of FSA loans. FSA is in the process of amending its credit reporting procedures to conform more closely to those in the commercial and consumer lending community by reporting delinquent farm loan program borrowers to credit reporting bureaus in accordance with the requirements of the DCA. This will reduce the likelihood of a lender extending credit without knowledge of the status of a borrower's FSA loan. In the case of a borrower who is current on his or her FSA, FLP loan, this rule is not likely to affect their ability to obtain credit.

Seventeen commenters indicated that the offsets would reduce the availability of guaranteed loans to a borrower who has a direct FSA, FLP loan. FSA, FLP's guaranteed loan program, which guarantees a lender against up to 90 percent of any loss of principal and interest, may be used by lenders to reduce their risk. This program requires a positive cash flow considering all income sources and debt payments. As stated by several commenters, FSA typically requires lenders to take an assignment of farm program payments; but we expect few, if any, loans to be approved with FSA income enhancement program payments as the sole planned source of repayment. If the borrower becomes delinquent on a direct loan and the payment is offset, there is authority to assist the borrower by servicing the guaranteed loan under one or more of the authorities contained in 7 CFR part 762.

With regard to assignments, lien position, and bankruptcy, this rule changes little. Administrative offset has been available and utilized for many years and the assignment forms which have been used by FSA have provided that offset to the Government has priority over an assignment to a lender. See 7 CFR 792.8 and 1403.8. Under this rule, the Government will continue to have priority over an assignment to a lender or supplier. In the case of bankruptcy, all creditor collection actions cease and the court will determine the uses of income, distribution of security and disposition of debt. In any event, the DCA requires non-tax accounts over 180 days delinquent to be forwarded to the Department of Treasury for offset, notwithstanding the action of FSA, FLP.

Aside from reporting to credit bureaus, FSA, FLP will not automatically inform another lender that a borrower has become delinquent on a loan as requested by commenters. This notification would be inconsistent with the requirements of the Privacy Act (5 U.S.C. 552(a)) unless FSA has specific approval from its borrower to release this information. However, as a result of farm visits and other routine servicing of the loan, it is likely that a lender that has extended operating credit will be aware of repayment problems that may result from a decline in production and the related risk of administrative offset. A natural disaster or unforeseen drop in sales would require a joint effort from all creditors. In addition, the occurrence of a natural disaster or financial disasters may allow FSA to use other FSA, FLP loan servicing authorities to correct the delinquency and maintain the operation.

Under 31 U.S.C. 3720B(a), a person is precluded from obtaining any Federal financial assistance, including USDA assistance in the form of a loan (other than an emergency loan), loan insurance, or a loan guarantee, while that person is delinquent on a non-tax Federal debt, unless the Secretary of Agriculture or a designee waives this prohibition. If FSA, FLP finds that the increased use of administrative offset makes it more difficult for agricultural producers to obtain loans, it will review this action.

Two commenters stated the FSA, FLP should abide by 7 CFR 1962.17 and releases of normal income security should be made ahead of offsets. Administrative offset and releases for essential family living and farm operating expenses are separate issues and the requirements of 7 CFR 1962.17 are not affected by this change. FSA program payments will be administratively offset prior to acceleration of the loan. However, offset is not the exercise of collection from FSA, FLP loan security. Offset is the administrative collection of an FSA, FLP debt due from funds due the borrower under another Government program. FSA may or may not have a security interest in that payment or may or may not have a first lien interest therein. FSA and CCC payments are not subject to attachment, garnishment or lien interest until paid. Offset intercepts these payments before they are made and before they are subject to any lien. The amounts when obtained are not normal income security and are not subject to the release provisions in 7 CFR 1962.17.

Two respondents stated that if FSA, FLP had agreed to release program payments on Form FHA 1962–1, Agreement for the Use of Proceeds/ Release of Chattel Security, the Agency cannot alter this agreement. Funds obtained through administrative offset are not the result of the Government's foreclosure on or otherwise seizing security.

At least two respondents commented that the Agency should attempt to correct a delinquency under 7 CFR part 1951, subpart S, prior to administrative offset. This comment is similar to others who suggested that the Agency more clearly define ''past due'' and not send the notice of intent to collect by administrative offset until the borrower is at least 90 days or up to 180 days past due. Notification requirements for administrative offset are separate from those of debt restructuring. When the required procedure has been completed, FSA, FLP has made the policy determination in accordance with the DCA that administrative offset will be taken regardless of the status of any request for servicing under the provisions of 7 CFR part 1951, subpart S.

However, the comment that requested that borrowers be allowed to become at least 90 days or up to 180 days past due before offsetting a payment was

considered. As a practical matter the issuance of a Notice of Intent to Collect by Administrative Offset will normally correspond to the commenter's request for at least a 90-day delay. Notice of offset will not generally occur until notice under 331D of the Consolidated Farm and Rural Development Act (Con Act), 7 U.S.C. 1981d, has been provided. The FSA, FLP administrative requirements will provide for the Notice to be sent simultaneously with or subsequent to the notice required by 331D of the Con Act. Because most FSA loan payments are due annually from January to May, if the recommendation that the Agency not begin offset procedures until the borrower is 180 days past due were adopted any FSA program payments made through at least June of every year would not be subject to offset on newly delinquent accounts. FSA could not wait until the expiration of the 180-day period and be consistent with the intent of the DCA, which requires that all FSA, FLP servicing be completed and debts be referred to the Department of Treasury as soon as possible after the account is 180 days past due. See 63 FR 16356, April 2, 1998, entitled ''Transfer of Debts to Treasury for Collection.'' Therefore, this recommendation was not adopted.

Other miscellaneous comments were received that could be paraphrased as general opposition to the proposal. At least four commenters suggested that this change is not required to expedite administrative offset. They indicated that the Agency's loan servicing and appeal regulations have required timeframes for actions that, if properly followed, would result in account acceleration much earlier than the months or years cited in the proposed rule. FSA agrees that employee delay may be a factor in cases of extended loan servicing. However, even if every timeframe contained in regulations is precisely followed, the result would be that acceleration was delayed long enough to allow a seriously delinquent borrower to obtain several payments before offset could be put into place. Therefore, the agencies did not adopt this comment.

List of Subjects in 7 CFR Part 1951

Accounting, Accounting servicing, Credit, Loan programs—Agriculture, Low and moderate income housing loans—Servicing.

Accordingly, for the reasons stated in the preamble, the interim rule published on August 1, 1997 (62 FR 41794), is adopted as a final rule with the following changes:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; and 42 U.S.C. 1480.

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

2. Revise § 1951.101 to read as follows:

§ 1951.101 General.

Federal debt collection statutes provide for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utilities Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to collectively as ''United States Department of Agriculture (USDA) Agency'', to collect delinquent debts. Any money that is or may become payable from the United States to an individual or entity indebted to a USDA Agency or other individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to RHS direct single family housing loans. Nothing in this subpart affects the agency's common law right of set off.

3. Revise § 1951.102 to read as follows:

§ 1951.102 Administrative offset.

(a) *General.* Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart B and § 1951.106.

(b) *Definitions.* In this subpart:

(1) *Agency* means Farm Service Agency, Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service, or any successor agency.

(2) *Contracting officer* is any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of the representative's authority.

(3) *County Committee* means the local committee elected by farmers in the county, as authorized by the Soil Conservation and Domestic Allotment Act and the Department of Agriculture Reorganization Act of 1994, to administer FSA programs approved for the county as appropriate.

(4) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(5) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(6) *Delinquent* means a payment that has not been paid within 30 calendar days after the due date.

(7) *Entity* means a corporation, joint stock company, association, general partnership, limited partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization participating in the farming operation.

(8) *FP* means Farm Programs.

(9) *FLP* means Farm Loan Programs.

(10) *FSA* means Farm Service Agency.

(11) *National Appeals Division* means the organization within the Department of Agriculture that conducts appeals of adverse decisions for program participants under the purview of 7 CFR part 11.

(12) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and transfers the funds to the creditor agency for application to the debt.

(13) *Propriety* means the offset is feasible. It includes offsetting a debtor's payments due any entity in which the debtor participates either directly or indirectly equal to the debtor's interest in the entity. To be feasible the debt must exist and be 60 days delinquent or past due for 90 days or the borrower must be in default of other obligations to the Agency, which can be cured by the payment of money.

(14) *Reviewing officer* means an agency employee responsible for conducting a hearing or documentary review on the existence of debt and the propriety of administrative offset in accordance with 7 CFR 3.29. FSA District Directors or other State Executive Director designees are

designated to conduct the hearings or reviews.

4. Add § 1951.106 to read as follows:

§ 1951.106 Offset of payments to entities related to debtors.

(a) *General.* Collections of delinquent debts through administrative offset will be in accordance with 7 CFR part 3, subpart B, and paragraphs (b) and (c) of this section.

(b) *Offsetting entities.* Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

(1) It is determined that FSA has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(l) and 1403.7(q), to pursue the entity payment;

(2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;

(3) Assets used in the entity's operation include assets pledged as security to the Agency which have been transferred to the entity without payment to the Agency of the value of the security or Agency consent to transfer of the assets;

(4) A corporation to which a payment is due is the alter ego of a debtor; or

(5) A debtor participates in, either directly or indirectly, the entity as determined by FSA.

(c) *Other remedies.* Nothing in this section shall be deemed to limit remedies otherwise available to the Agency under other applicable law.

5. Revise the introductory text and paragraph (b)(1) in § 1951.111 to read as follows:

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of Federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquent debts owed to them by employees of the USDA Agency, excluding county committee members. Administrative offset, rather than salary offset, will be used to collect money from Federal employee retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for Farm Loan Programs loans, salary offset will not be instituted if the Federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount against an employee's salary.

* * * * *

(b) * * *

(1) *Certifying Officials.*—State Directors; State Executive Directors; the Assistant Administrator; Finance Office; Financial Management Director; Financial Management Division, and the Deputy Administrator for Management, National Office.

* * * * *

§§ 1951.121 through 1951.135 [Removed and Reserved]

6. Sections 1951.121 through 1951.135 are removed and reserved.

Signed in Washington, D.C., on August 8, 2000.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: August 13, 2000.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 00–21146 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–094–2]

Poultry Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for importing poultry products to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of exotic Newcastle disease (END), under certain conditions, for export to another country. We believe such in-transit movements present a negligible risk of introducing END into the United States. This action relieves restrictions on trade while continuing to provide protection against the introduction of END into the United States.

EFFECTIVE DATE: September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. The regulations in § 94.6 govern, among other things, the importation of poultry carcasses, parts, products, and eggs (other than hatching eggs) from regions where exotic Newcastle disease (END) or *Salmonella enteritidis*, phage-type 4, is considered to exist. Because END exists in certain parts of Mexico, Mexico is characterized, under § 94.6(a), as a region where END is considered to exist. Further, under the regulations in § 94.6(b), Mexico is also characterized as a region where *S. enteritidis*, phage-type 4, is considered to exist.

Poultry carcasses and parts and products of poultry carcasses from most parts of Mexico may be imported into the United States only in accordance with § 94.6. Section 94.6 requires the carcasses or parts and products to be cooked prior to importation or to be consigned directly to an approved establishment in the United States. Under the regulations in § 94.22, poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora may be imported into the United States under less restrictive conditions because these States are considered low risk for END. Section 94.6 provides that poultry eggs (other than hatching eggs) from Mexico may be imported into the United States only if: (1) They are

accompanied by a health certificate regarding the flock of origin and meet certain other conditions; (2) they are consigned directly to an approved establishment for breaking and pasteurization; (3) they are imported under permit for scientific, educational, or research purposes; or (4) they are imported under permit and have been cooked or processed or will be handled in a manner that prevents the introduction of END and *S. enteritidis* into the United States.

Further, poultry carcasses, parts, products, and eggs (other than hatching eggs) that do not qualify for entry into the United States under one of these conditions may transit the United States via air and sea ports under the conditions contained in § 94.15(d).

On February 8, 2000, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (65 FR 6040–6044, Docket No. 98–094–1) a proposed rule to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of END, under certain conditions, for export to another country.

We solicited comments concerning our proposal for 60 days ending April 10, 2000. We received one comment by that date. The comment was from a representative of a foreign government.

The commenter supported the rule, but requested that we clarify whether the refrigerated containers used to transport frozen or chilled poultry can have a tube that allows water or condensation to escape during transit.

Our proposed rule specifies that for poultry to be eligible to transit the United States, it must, among other things, be packaged in leakproof containers. We are requiring the use of leakproof containers to ensure that liquid that may have come in contact with poultry inside the container cannot escape outside the container. However, condensation or water that is produced by a refrigeration unit that is attached to the container carrying poultry is allowed to drain outside the container since such condensation or water would not have come in contact with the poultry inside the container.

The commenter also requested that we develop a procedure to allow additions to the list of Mexican States eligible to transit poultry through the United States without having to go through rulemaking each time. The commenter stated that such a procedure would speed up the response time to requests by Mexico to relieve restrictions.

APHIS makes every effort to respond promptly to requests made by foreign governments to relieve restrictions; however, APHIS must do so in accordance with applicable laws and executive orders, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and Executive Order 12866, among others.

Changes to the Proposed Rule

In our proposed rule, we listed the States of Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan, Mexico, as States that Mexico considered to be free of END. However, since the publication of our proposed rule, an outbreak of END has occurred in the Lagunera region of the States of Coahuila and Durango. Because of the recent outbreak of END in Coahuila and Durango, we are not including those States in the list of States eligible to transit poultry through the United States under this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Currently, the regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals or animal products into the United States to prevent the introduction of certain animal diseases. Under the regulations, poultry carcasses, parts, and products from Mexico must meet the requirements of § 94.6 or § 94.22 to be imported into the United States because exotic Newcastle disease (END) is considered to exist in certain areas in Mexico.

In this document, we are amending the regulations in part 94 to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States under § 94.6 or § 94.22 to move via land ports through the United States from 10 Mexican States, under certain conditions, for export to another country. These 10 States have been officially declared by the Government of Mexico to be free of END.

An APHIS review of the END situation in those States has revealed that, if proper risk management techniques continue to be applied in Mexico, and if accidents and exposure are minimized by proper handling during transport, there will be a negligible risk that END could be disseminated into the United States as a result of this rulemaking.

This rule will have no direct effect on U.S. producers and consumers of poultry because Mexican poultry would only transit the United States en route to other countries and would not enter U.S. marketing channels. Neither the quantity or price of poultry traded in U.S. domestic markets nor U.S. consumer or producer surplus will be affected by this rule.

A benefit of allowing Mexican poultry to transit the United States for export is that U.S. companies will ship the poultry from U.S. receiving centers in the border States of California, Arizona, and Texas to export points. Current Department of Transportation regulations restrict trucks from Mexico from proceeding into the United States due to safety restrictions. However, any economic activity that could result from this rule is dependent on the volume of poultry shipped from Mexico for export to other countries. Given Mexico's low volume of poultry and poultry product exports, few shipments of poultry are likely to transit the United States to other countries under this rule, and benefits to U.S. carriers and shippers are likely to be very small.

Potential losses from disease outbreaks are not quantified because APHIS judges the likelihood of outbreaks (which could result from a combination of factors such as the presence of the disease in Mexico, failure of the preclearance program, accidental openings while in transit, or exposure after an accidental opening of a shipment) to be negligible.

Mexican Poultry Production and Exports

Since 1990, poultry meat production in Mexico has grown 5 percent annually to reach 1.7 million metric tons in 1998. However, nearly all of the poultry meat produced in Mexico is consumed domestically. For example, in 1997, Mexico produced 1.5 million metric tons of poultry, but exported only 5,000 metric tons of that total. Therefore, we anticipate that the volume of poultry that will transit the United States under this rule will be very small.

Effects on Small Trucking Companies

This rule could directly affect U.S. trucking companies operating in the

border States of California, Arizona, and Texas. Small Business Administration (SBA) data show that there are approximately 18,000 trucking companies operating in those States, and over 96 percent of those companies are small entities. However, it is unclear how many of those companies will be affected by this rule.

Prior to the effective date of this rule, freight arriving in the Customs territory of the United States by truck from Mexico had to be delivered to customers within the commercial zone of the U.S. cities along the border or else transferred to a U.S. trucking or other shipping company within that zone. U.S. trucking companies could benefit from transporting Mexican poultry from U.S. land border ports to U.S. maritime ports. However, given the anticipated low volume of Mexican exports, this rule will likely not have a significant economic effect on a substantial number of small trucking companies.

Effects on Small Railroad Companies

This rule could also affect four U.S. railroad companies that currently transport goods across the U.S.-Mexico border. Two of these railroad companies meet SBA criteria for small entities (fewer than 1,500 employees). Any economic effects on railroad companies, whether small or large, would likely be positive, but such effects are anticipated to be insignificant, given the expected small volume of Mexican exports.

Effects on U.S. Poultry Exporters

This rule could also affect U.S. poultry exporters. Historical data on shipments of Mexican poultry suggest that the poultry would be shipped to either Japan or the Middle East; but, once again, given the anticipated low volume of Mexican exports, U.S. companies that export poultry and poultry products to these two regions are unlikely to be significantly affected.

Trade Relations

This rule removes some restrictions on the movement of poultry carcasses, parts, or products (except eggs and egg products) from certain States in Mexico and attempts to encourage a positive trading environment between the United States and Mexico by stimulating economic activity and providing export opportunities to Mexican poultry industries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0145.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.15 is amended as follows:

a. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.

b. A new paragraph (c) is added.

c. The statement in parentheses at the end of the section, concerning approval by the Office of Management and Budget, is revised.

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(c) Poultry carcasses, parts, or products (except eggs and egg products) from Baja California, Baja California Sur, Campeche, Chihuahua, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States via land ports for immediate export if the following conditions are met:

(1) The person desiring to move the poultry carcasses, parts, or products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). An application for the permit may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

(2) The poultry carcasses, parts, or products are packaged at a Tipo Inspeccioon Federal plant in Baja California, Baja California Sur, Campeche, Chihuahua, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, in leakproof containers with serially numbered seals of the Government of Mexico, and the containers remain sealed during the entire time they are in transit across Mexico and the United States.

(3) The person moving the poultry carcasses, parts, or products through the United States notifies, in writing, the Plant Protection and Quarantine Officer at the U.S. port of arrival prior to such transiting. The notification must include the following information regarding the poultry to transit the United States:

(i) Permit number;

(ii) Times and dates of arrival in the United States;

(iii) Time schedule and route to be followed through the United States; and

(iv) Serial numbers of the seals on the containers.

(4) The poultry carcasses, parts, or products transit the United States under U.S. Customs bond and are exported from the United States within the time limit specified on the permit. Any poultry carcasses, parts, or products that have not been exported within the time limit specified on the permit or that have not transited in accordance with the permit or applicable requirements of this part will be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0145)

Done in Washington, DC, this 15th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21171 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG15

Clarification and Addition of Flexibility

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on spent fuel storage to specify those sections of those regulations that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate of compliance (CoC). These amendments are consistent with past NRC licensing practice to eliminate any ambiguity for these persons by clarifying which portions of the regulations apply to their activities. The final rule eliminates the necessity for repetitive reviews of cask design issues in a licensing proceeding on applications for specific licenses, where previously approved cask designs, or designs under Commission review, have been incorporated by reference into the application. Also, the final rule eliminates repetitive reviews in those cases where the site-specific licensing proceeding and a CoC review and certification (*i.e.,* rulemaking) are proceeding in parallel. Lastly, this rule allows an applicant for a CoC to begin cask fabrication under an NRC-approved quality assurance (QA) program before the CoC is issued.

EFFECTIVE DATE: September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Anthony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, e-mail AJD@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Commission's regulations at 10 CFR part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in an independent spent fuel storage installation (ISFSI) (45 FR 74693; November 12, 1980). In 1990, the Commission amended Part 72 to include a process for approving the design of spent fuel storage casks and issuing a CoC (Subpart L) and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for the storage of spent nuclear fuel (55 FR 29181; July 18, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which Part 72 requirements, other than those in Subparts K and L, are applicable to general licensees and certificate holders, respectively.

In addition, the Commission has identified two aspects of Part 72 where it is desirable to reduce the regulatory burden and provide additional flexibility to applicants for a specific license or a CoC.

First, the Commission anticipates receipt of several applications for a specific license that will propose using storage cask designs previously approved by NRC under the provisions of Subpart L of Part 72 (*i.e.,* cask designs that have been issued a CoC and are listed in § 72.214). Section 72.18, ''Elimination of repetition,'' permits an applicant to incorporate by reference information contained in previous applications, statements, or reports filed with the NRC, including cask designs approved under Subpart L. Section 72.46 requires that in an application for a specific license under Part 72, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for a license hearing (*i.e.,* a licensing proceeding) in accordance with 10 CFR part 2. Under current Part 72 regulations, the adequacy of the design of these previously approved casks could be at issue during a § 72.46 licensing proceeding for a specific license application (*i.e.,* issues on the cask design which have been previously addressed by the Commission, including resolution of public comments, could be the subject of a licensing proceeding).

Second, § 72.234(c), which was part of the 1990 amendments to Part 72, prohibits an applicant for a CoC from beginning fabrication of a spent fuel cask before the NRC issues a CoC for the cask design. However, an applicant for a specific license is currently allowed to begin fabrication of spent fuel storage casks before the license is issued. At the time the 1990 rule was proposed, a commenter suggested that a fabricator (*i.e.,* applicant for a CoC) be allowed to take the risk of beginning fabrication before the receipt of the CoC. However, in the final rule, the Commission took the position, ''[i]f a vendor has not received the certificate, then the vendor does not have the necessary approved specifications and may design and fabricate casks to meet incorrect criteria'' (55 FR 29185; July 18, 1990).

Since 1990, the Commission has reviewed and approved several cask designs. These reviews and follow-up requests for additional information have established the NRC's expectation as to how its criteria for cask design and fabrication should be met. In January 1997, the NRC published NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems,'' informing CoC applicants of its expectations in reviewing cask designs. Since then, the Commission has granted several exemptions from § 72.234(c) allowing applicants to begin fabrication before issuance of the CoC. Additional exemption requests from § 72.234(c) requirements are anticipated.

The Commission published a proposed rule in the **Federal Register** (64 FR 59677; November 3, 1999). The comment period ended January 18, 2000, and eight comment letters were received on the proposed rule. These comments and responses are discussed in the ''Summary of Public Comments on the Proposed Rule'' section.

Discussion

Clarification: This final rule eliminates the regulatory uncertainty that currently exists in Part 72 by adding a new section § 72.13 that specifies which Part 72 regulations apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. To aid users of Part 72 in understanding § 72.13, the NRC has created a Table of Applicability for Part 72 regulations (Table). For each section, paragraph, or subparagraph, the Table identifies whether the regulation applies to a general licensee, specific licensee, applicant for a specific license, certificate holder, and/or an applicant for a CoC. The Table is available for review in the NRC's Public Electronic Reading Room on the NRC's website (http://www.nrc.gov) under Accession Number ML003736106.

Flexibility: First, the final rule eliminates the necessity for repetitious reviews of cask design issues during a § 72.46 licensing proceeding for issues the Commission has previously considered, or is considering, during the cask design review and certification process (*i.e.,* rulemaking). The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage

cask designs either previously approved by the NRC under Subpart L or currently under consideration. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report on a cask design either previously approved or currently under review by the NRC for certification under the provisions of Subpart L. The Commission believes that both of these situations should be excluded from the scope of a specific licensing proceeding. This is because the public has the opportunity during the Subpart L approval process to comment on the adequacy of the cask design. The opportunity of the public to comment on cask designs will not be affected by this rulemaking. However, design interface issues between the referenced cask design and specific site characteristics (*e.g.,* meteorological, seismological, radiological, and hydrological), or changes to the cask's approved design, must be addressed by the applicant in its application and may be raised as potential issues in the licensing proceeding. Furthermore, the rights of the public to petition the Commission under §§ 2.206 and 2.802 to raise new safety issues on the adequacy of the cask design will not be adversely impacted by this rulemaking.

Second, the final rule permits an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks at its risk before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e,* the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this final rule eliminates NRC's disparate treatment between general and specific licensees. The Commission and the staff have previously determined that exemptions from the fabrication prohibition in § 72.234(c) are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. Absent this final rule, the Commission expects that additional exemption requests to permit fabrication would also be received. This final rulemaking eliminates the need for such exemption requests.

Additionally, the final rule revises the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication activities under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) currently precludes cask fabrication until after the CoC is issued. The Commission believes the revised provision in the final rule is a conditional relaxation to permit fabrication before the CoC is issued. Because NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program before fabrication is a question of timing (*i.e.,* when the program is approved), rather than imposing a new requirement for approval of a program. The Commission expects that any financial or scheduler risks associated with fabrication of casks before issuance of the CoC would be borne by the applicant. The Commission believes the final rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license. The final rule requires that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before the cask may be used.

The final rule also requires an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license may begin cask fabrication before the license is issued. Additionally, the licensee is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this final rule imposes a separate requirement on applicants for a specific license. Rather, this rule requires different timing on when the NRC approves a QA program.

This final rule also revises § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC, in lieu of submitting a new QA program. The Commission expects that a new QA program or an existing Part 50 or Part 71 QA program used by these persons will comply with the requirements of Part 72, Subpart G.

As a result, the final rule requires both licensees and certificate holders to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes the final rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

Summary of Proposed Rule Amendments

The changes to the sections discussed below were proposed when the rule was published for public comment on November 3, 1999, (64 FR 59677). These proposed changes were intended to: (1) eliminate the regulatory uncertainty that now exists in Part 72 and explicitly specify which regulations apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC; (2) eliminate the necessity for repetitious reviews in a specific license hearing of cask design issues that the Commission previously considered during approval of the cask design; (3) permit an applicant for approval of a spent fuel storage cask design to begin cask fabrication, at its own risk, before the NRC has issued the CoC; and (4) require that NRC approval of the quality assurance program be obtained before cask fabrication can commence.

Section 72.13 Applicability

It was proposed that a new section be added to Part 72 to identify those sections of Part 72 that apply to specific licenses, general licenses, and Certificates of Compliance. No changes to the underlying regulations would result from this amendment, as it is intended for clarification only.

Section 72.46 Public Hearings

It was proposed that a new paragraph (e) be added to this section to indicate that the scope of any licensing proceeding for an application for a specific ISFSI license, shall not include any issues that were previously resolved by the Commission during the approval process of the design of a spent fuel storage cask when the application incorporates by reference information on the design of an NRC-approved spent fuel storage cask. The Commission considers rereview of cask design issues

that have been previously resolved as an unnecessary regulatory burden on applicants causing unnecessary expenditure of staff and hearing board resources. For example, the cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (e.g., meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design must be addressed by the applicant in its application and may be raised as issues at a potential hearing.

The proposed provisions would not limit the scope of either the staff's review of the application, or of a licensing proceeding, for new cask design issues that were not considered by the Commission during previous approval of the cask design. In addition, the rights of the public to petition the Commission under §§ 2.206 or 2.802 to raise new safety issues on the adequacy of the cask design would not be affected by this proposed provision.

Section 72.86 Criminal Penalties

It was proposed that paragraph (b) of this section list those Part 72 regulations for which criminal sanctions may not be issued because the Commission considers these sections to be nonsubstantive regulations issued under the provisions of § 161(b), (i), or (o) of the Atomic Energy Act of 1954 (AEA). Substantive regulations are those regulations that create duties, obligations, conditions, restrictions, limitations, and prohibitions (see final rule on ''Clarification of Statutory Authority for Purposes of Criminal Enforcement'' (57 FR 55062; November 24, 1992)). The Commission considers that the new § 72.13 would not be a substantive regulation, issued under the provisions of § 161(b), (i), or (o) ofthe AEA. Therefore, proposed paragraph (b) of this section added § 72.13 to indicate that willful violations of this new section would not be subject to criminal penalties.

Section 72.140 Quality Assurance Requirements

It was proposed that paragraph (c)(1) be revised to add applicants for a specific license and applicants for a CoC. Paragraph (c)(2) would be revised to add the requirement that an applicant for a specific license shall obtain NRC approval of its QA program before beginning fabrication or testing of a spent fuel storage cask. Paragraph (c)(3) would be revised to indicate that an applicant for a CoC shall obtain NRC approval of its QA program before beginning fabrication or testing of a spent fuel storage cask. These proposed revisions would result in consistent treatment of general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. These revisions would also ensure that the NRC has reviewed and approved a QA program before commencement of any fabrication or testing activities.

The proposed rule included a revised paragraph (d) to clarify the use of previously approved QA programs by a licensee, applicant for a license, certificate holder, and applicant for a CoC. The Commission expects these persons to notify the NRC of their intent to use a QA program previously approved by the NRC under the provisions of Parts 50, 71, or 72.

Section 72.234 Conditions of Approval.

The proposed rule included a revised paragraph (c) that would permit an applicant for a CoC to begin fabrication of spent fuel storage casks (under an NRC-approved QA program), at the applicant's own risk, before the NRC issues the CoC. The proposed revision also requires that a cask fabricated before the CoC was issued conform to the issued CoC before spent fuel is loaded. Consequently, the Commission expects that any risks associated with fabrication (e.g., rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

Section 72.236 Specific Requirements for Spent Fuel Storage Cask Approval

The introductory text in this section before paragraph (a) was proposed as a conforming change to § 72.234(c) to indicate that all of the requirements in this section would apply to both certificate holders and applicants for a CoC.

Summary of Public Comments on the Proposed Rule

The Commission received eight comment letters on the proposed rule. The commenters included five NRC licensees, one applicant for an NRC license, one NRC Part 72 certificate holder, and the Nuclear Energy Institute (NEI) representing industry. All commenters favored the proposed rule, but with the addition of some changes.

Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527.

A review of the comments, not necessarily in the order received, and the Commission's responses follow.

A. Clarification of Which Sections of Part 72 Apply to Specific Licensees, General Licensees, and Certificate Holders

Comment A.1: One commenter, a licensee, believes that § 72.180 should not apply to a specific licensee. The commenter noted that § 72.180 requires licensees to have a physical protection plan that meets the requirements of § 73.51. The commenter also indicated that NRC staff had previously determined that the provisions of § 73.51 were not applicable to site-specific licensees, as in the case of the North Anna or Surry ISFSIs, who also possess a Part 50 reactor license. This clarification was documented in a letter from the NRC to Virginia Power, dated November 12, 1998.

Response: The NRC agrees with the commenter that § 73.51 does not apply to those ISFSIs that are collocated at an operating reactor licensee's site. This is because adequate physical protection measures are implemented through § 73.55 requirements at operating nuclear power plant sites. However, for those ISFSIs that are not collocated at a nuclear power plant site, NRC believes that the requirements of § 73.51 apply. Therefore, § 72.13(b) indicates that § 72.180 applies to specific ISFSI licensees. Section 72.180 requires that an ISFSI licensee implement a physical protection plan as described in § 73.51.

Notwithstanding this response, the NRC agrees that the commenter has identified an area of the current regulations where further clarification is warranted. In a 1998 final rule, ''Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste,'' the NRC revised § 72.180 to state, in part, ''The licensee shall establish, maintain, and follow a detailed plan for physical protection as described in § 73.51 of this chapter * * *'' (63 FR 26955; May 15, 1998). The NRC also added a new § 73.51 that stated, in part:

(a) *Applicability.* Notwithstanding the provisions of §§ 73.20, 73.50, or 73.67, the physical protection requirements of this section apply to each licensee that stores spent nuclear fuel and high-level radioactive waste pursuant to paragraphs (a)(1)(i), (ii), and (2) of this section. This includes—

(1) Spent nuclear fuel and high-level radioactive waste stored under a specific license issued pursuant to part 72 of this chapter: (i) At an independent spent fuel storage installation (ISFSI) or * * *

However, the NRC stated in the Statement of Consideration (SOC) for the May 15, 1998, final rule, Section II.5, second comment, ''The Commission notes that a licensee having a Part 50 license does not fall within the scope of the final rule [on § 73.51] * * * * '' (63 FR 26957). Based on the language of the SOC, the NRC's practice has been that a specific Part 72 licensee, who is also a Part 50 license holder, does not have to comply with the security plan requirements of § 73.51.

The NRC will consider revising § 73.51 in a subsequent rulemaking to clarify that a ISFSI licensee, who is also a Part 50 reactor licensee, may follow the security plan requirements of either § 73.51 or § 73.55.

Comment A.2: Three commenters—a licensee, NEI, and an applicant for a license—believe that § 72.214 should apply to general licenses. The commenters noted that Part 72 allows general licensees to store spent fuel in containers that are approved under the provisions of Part 72 and are listed under § 72.214. The commenters believe that ambiguity would remain in Part 72 if § 72.13 does not reference that § 72.214 can be used by general licensees.

Response: The NRC agrees with the commenters that because a general licensee must choose a spent fuel storage cask design listed under § 72.214, applying this section to general licensees will reduce regulatory confusion. Therefore, § 72.13(c) is revised in this final rule to include § 72.214.

Comment A.3: Three commenters—a licensee, NEI, and an applicant for a license—believe that § 72.240(a) should apply to general licenses. Section 72.240(a) allows the user of a cask design approved by the NRC to apply for reapproval (i.e., renewal) of a cask design, as an alternative to an application for renewal by the certificate holder. Therefore, the commenters believe that § 72.240(a) should also apply to general licenses and be listed in § 72.13(c).

Response: The NRC agrees with the commenters that a general licensee can currently apply for reapproval of a CoC under § 72.240(a). Therefore, § 72.13(c) is revised in this final rule to include § 72.240(a).

Comment A.4: One commenter, a licensee, believes that §§ 72.44(b)(1) and 72.50(a) should be revised to eliminate applicability of these sections to a general license. Sections 72.44(b)(1) and 72.50(a) both require NRC consent in writing before a license is transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly. Sections 72.44(b)(1) and 72.50(a) are inconsistent with § 72.210. Section 72.210 provides for a general license to be issued to persons authorized to possess or operate nuclear power reactors under 10 CFR Part 50. It follows that if a transfer of the license to possess or operate a nuclear power reactor is approved under § 50.80, the general license issued under § 72.210 is also transferred without additional action.

Response: The NRC disagrees with the commenter and believes that §§ 72.44(b)(1) and 72.50(a) apply to general and specific Part 72 licensees. A Part 72 general license issued to a ''person'' is a separate and legally distinct authority from a Part 50 reactor license, even if issued to the same ''person.'' NRC believes confusion arises on this issue because possession of a Part 50 license is a required condition for automatic issuance of a Part 72 general license under § 72.210. NRC also believes that licensees can reduce their regulatory burden by submitting a single application for NRC review and approval to transfer a Part 50 license and Part 72 general license to a new owner. While this application includes two legally separate regulatory actions, NRC will consolidate the reviews and approvals to reduce industry burden.

Comment A.5: One commenter, a licensee, believes that §§ 72.44(b)(2) and 72.60(a) should be revised to eliminate applicability of these sections to a general license. Sections 72.44(b)(2) and 72.60(a) both state that a license is subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954 (AEA), as amended, or by reason, rules, or regulations, or orders issued in accordance with the Act or any amendment thereto. Sections 72.44(b)(2) and 72.60(a) are inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.54(e) contains a similar requirement to that of §§ 72.44(b)(2) and 72.60(a). A general license issued by § 72.210 is subject to amendment, revision, or modification by reason of amendments to the AEA, as amended, or by reason, rules, or regulations through § 50.54(e).

Response: The NRC disagrees with the commenter and believes that §§ 72.44(b)(2) and 72.60(a) apply to general and specific Part 72 licensees. The NRC has the authority to modify, suspend, or revoke all, or part, of the general license being used by a Part 72 licensee to receive title to, own, or store power reactor spent fuel in an ISFSI. The NRC may order this action either as an enforcement sanction taken in response to a licensee's failure to comply with Part 72 regulations or because of passage of legislation that amends the AEA or the Nuclear Waste Policy Act of 1982 (i.e., the statutory bases for the Part 72 regulations).

Comment A.6: One commenter, a licensee, believes that § 72.44(b)(3) should be revised to eliminate applicability of this section to a general license. Section 72.44(b)(3) requires: ''Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation, if appropriate, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.'' Section 72.44(b)(3) is inconsistent with § 72.210. Section 72.210 provides for a general license to be issued to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.54(f) contains a similar requirement to that of § 72.44(b)(3). It follows that a general license issued under § 72.210 is subject to providing requested information through § 50.54(f).

Response: The NRC disagrees with the commenter and believes that § 72.44(b)(3) currently applies to general and specific Part 72 licensees. The NRC has the authority under the AEA to require any licensee to submit written statements to the Commission to determine if the license should be suspended, modified, or revoked. [See also Comments A.4 and A.5.]

Comment A.7: Two commenters, both licensees, believe that § 72.44(e) should be revised to eliminate applicability of this section to a general license. Section 72.44(e) requires:

> ''The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to § 72.180 without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to § 72.56. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within 2 months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of 3 years from the date of the change.''

Sections 72.180 and 72.56 apply only to a specific license and do not apply to a general license. Therefore, applying § 72.44(e) to a general license is inconsistent with the remainder of the proposed rule. Additionally, § 72.44(e) is inconsistent with § 72.212(b)(5) in

Subpart K which invokes the requirements of § 73.55 and the change control requirements of § 50.54(p).

Response: The NRC agrees with the commenters. As stated in the proposed rule (and as discussed in Comment A.1), § 72.180 applies only to Part 72 specific licensees. Because § 72.44(e) refers to changes to a physical security plan prepared pursuant to § 72.180, this paragraph cannot apply to general licensees. Therefore, § 72.13(c) is revised in this final rule to exclude § 72.44(e).

Comment A.8: One commenter, a licensee, believes that § 72.44(f) should be revised to eliminate applicability of this section to a general license. Section 72.44(f) requires, in part: ''A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission.'' Section 72.44(f) is inconsistent with § 72.212(b)(6) in Subpart K which requires: ''Review the reactor emergency plan, quality assurance program, training program, and radiation protection program to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals.'' Section 50.54(q) contains the change control requirements for the emergency plan. Section 72.13 should be revised to eliminate applicability of § 72.44(f) to a general license.

Response: The NRC disagrees with the commenter and believes that § 72.44(f) applies to Part 72 general and specific licensees. As stated in the proposed rule, § 72.32(c) and (d) apply to both general and specific licensees. Specifically, § 72.32(c) permits a Part 72 licensee who is located on the site, or within the exclusion area, of a nuclear power reactor to use an emergency plan that meets the requirements of § 50.47 to satisfy the requirements of § 72.32. The emergency plan referred to in § 72.212(b)(6) for a general licensee originates in § 50.47. Consequently, there is no inconsistency between §§ 72.32 and 72.212. Additionally, similar to Comment A.4, changes to an emergency preparedness plan, that affects both a collocated ISFSI and a Part 50 reactor, can be made under a single submittal to reduce industry burden. NRC will consolidate its reviews and approvals of these changes to reduce industry burden.

Comment A.9: One commenter, a licensee, believes that § 72.52(c) should be revised to eliminate applicability of this section to a general license. Section 72.52(c) states: ''Any Creditor so secured may apply for transfer of the license covering spent fuel by filing an application for transfer of the license pursuant to § 72.50(b). The Commission will act upon the application pursuant to § 72.50(c).'' Section 72.50(b) and (c) are designated in § 72.13 as applying only to a specific license and not applying to a general license. Therefore, applying § 72.52(c) to a general license is inconsistent with the remainder of the proposed rule. Additionally, § 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. If a transfer of the license to possess or operate a nuclear power reactor is approved under Part 50, the general license issued by § 72.210 is also transferred without additional action. Section 72.13 should be revised to eliminate applicability of § 72.52(c) to a general license.

Response: The NRC agrees with the commenter. As stated in the proposed rule, § 72.50(b) applies only to Part 72 specific licensees. Because § 72.52(c) refers to a creditor applying for transfer of a license pursuant to § 72.50(b), applying § 72.52(c) to general licensees would be inconsistent with the remainder of the proposed rule. Therefore, § 72.13(c) is revised in this final rule to exclude § 72.52(c).

Comment A.10: One commenter, a licensee, believes that § 72.54(f) through (m) should be revised to eliminate applicability of this section to a general license. Section 72.54(d) through (m) is designated as applying to a general license. Applying any of § 72.54, ''Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas,'' to a general license is inconsistent with existing Subpart K requirements in § 72.218, ''Termination of licenses.'' Section 72.218 relies upon requirements contained in Part 50 which are adequate to ensure that spent fuel is disposed of properly and that decommissioning is completed so that the license may be terminated.

Response: The NRC agrees with the commenter. Section 72.218(a) requires that a general licensee shall notify the NRC of the licensee's program for management and removal of spent fuel in accordance with § 50.54(bb). The timing of the notification required by § 50.54(bb) is different from that required by § 72.54(d). Because a general licensee cannot be required to comply with two differing requirements on the same subject and § 72.218 is specifically directed to general licensees, the NRC agrees that § 72.54(d) through (m) do not apply to a general licensee. Therefore, § 72.13(c) is revised in this final rule to exclude § 72.54(d) through (m).

Comment A.11: One commenter, a licensee, believes that § 72.60(b) should be revised to eliminate applicability of this section to a general license. Section 72.60(b) enumerates reasons that a license may be modified, revoked, or suspended in whole, or in part. Section 72.60(b) is inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.100 requirements are similar to those of § 72.60(b). Section 72.13 should be revised to eliminate applicability of § 72.60(b) to a general license.

Response: The NRC disagrees with the commenter and believes that § 72.60(b) applies to general and specific Part 72 licensees. The NRC has the authority under the AEA to modify, suspend, or revoke all, or part, of the general license being used by a Part 72 licensee to receive, transfer, or possess power reactor spent fuel. The purpose of this authority is the same as described in Comment A.5.

Comment A.12: One commenter, a licensee, believes that § 72.60(c) should be revised to eliminate applicability of this section to a general license. Section 72.60(c) states, in part: ''Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee.'' Section 72.60(c) is inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.101 requirements are similar to those of § 72.60(c).

Response: The NRC disagrees with the commenter and believes that § 72.60(c) applies to general and specific Part 72 licensees. Associated with the NRC authority under the AEA to modify, suspend, or revoke all, or part, of the general license is the authority to order the recapture of any special nuclear material contained in spent fuel possessed by a general licensee. The Commission may take such action in cases of extreme importance to the national defense and security or to the health and safety of the public. (See also Comments A.5 and A.11.)

Comment A.13: One commenter, a licensee, believes that § 72.80(f) should be revised to eliminate applicability of this section to a general license. Section 72.80(f) states: ''If licensed activities are transferred or assigned in accordance with § 72.44(b)(1), the licensee shall transfer the records required by §§ 20.2103(b)(4) and 72.30(d) to the new licensee and the new licensee will be responsible for maintaining these

records until the license is terminated.'' Section 72.80(f) is inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. If a transfer of the license to possess or operate a nuclear power reactor is approved under § 50.80, the general license issued by § 72.210 is also transferred without additional action. Section 50.71 requires that records be retained until the facility license is terminated unless otherwise specified.

Response: The NRC disagrees with the commenter and believes that § 72.80(f) applies to general and specific Part 72 licensees. As stated in the proposed rule (and as discussed in Comment A.4), §§ 72.44(b)(1) and 72.30(d) apply to both general and specific Part 72 licensees. Therefore, a general licensee can comply with the requirements to transfer required records to the new licensee.

Comment A.14: One commenter, a certificate holder, believes that § 72.62 should be revised to apply to certificate holders. Section 72.62 provides specific criteria to be met if the Commission is to require the backfitting of changes to structures, systems, and components of an ISFSI or changes to the procedures or organization required to operate an ISFSI. Section 72.13 excludes the applicability of § 72.62 to certificate holders. The commenter believes that without backfit protection, certificate holders are subject to new requirements that may provide little safety benefit or are excessively costly to implement.

Response: The NRC believes this comment is beyond the scope of the proposed rule. As discussed in Comment A.1, § 72.13 only clarified which sections of Part 72 apply to specific licensees, general licensees, and certificate holders; it did not change the current scope or intent of these individual sections. The current language in § 72.62 only refers to Part 72 licensees (i.e., specific and general licensees). Consequently, revising § 72.13 to indicate that § 72.62 applies to certificate holders would also require adding certificate holders to the language of § 72.62.

Comment A.15: One commenter, a licensee, believes that § 72.44(d) should not apply to general licensees. Section 72.44(d) states in part, ''[e]ach license authorizing in the receipt, handling, and storage of spent fuel or high-level radioactive waste under this part must include technical specifications * * *'' The commenter believes that the technical specifications are a component of a Part 72 ISFSI specific license or a Part 72 CoC; however, they are not part of a Part 72 ISFSI general license. The commenter noted that in issuing the general license provisions in Subpart K (55 FR 29181; July 18, 1990), the NRC did not require submission of an application to receive a general license. Therefore, technical specifications, that are to be submitted as part of a license application, cannot be part of a general license.

Response: The NRC agrees with the commenter. The Part 72, Subpart K general license is issued in accordance with the provisions of § 72.210. Section 72.210 does not contain any technical specifications; however, ''license conditions'' for this general license are contained in § 72.212. Specifically, § 72.212(b)(7) states, in part, ''[t]he licensee shall comply with the terms and conditions of the certificate.'' The CoC for a cask design contains technical specifications for its use. Consequently, a general licensee is required to comply with the CoC's technical specifications associated with the cask design it is using, rather than submitting separate technical specifications under § 72.44(d). Therefore, § 72.13(c) is revised in the final rule to exclude § 72.44(d).

Comment A.16: One commenter, a licensee, believes that § 72.192 should not apply to general licensees. Section 72.192 states that, ''[t]he applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI or MRS personnel. This program must be submitted to the Commission for approval with the license application.'' The commenter noted that § 72.6(a) indicates that a general license is effective *without the filing of an application to the Commission* [emphasis original]. Therefore, the commenter believes that applying § 72.192 to a general license creates conflicting regulations.

Response: The NRC agrees with the commenter that a general licensee is not required to submit an application. Consequently, a general licensee would not have to submit a training program for NRC approval ''with the license application.'' Therefore, § 72.13(c) is revised in the final rule to exclude § 72.192.

B. Eliminate Repetitive Reviews of Cask Design Issues in Licensing Proceedings on Applications for Specific Part 72 Licenses Which Reference NRC-Approved Quality Assurance Programs Before Issuance of a CoC

Comment B.1: Three commenters, a licensee, NEI, and an applicant for a license, support avoiding repetitive reviews of cask design issues in a Part 72 specific license hearing where the previously-approved cask design has been incorporated by reference into the application. However, the commenters believe that this aspect of the proposed rulemaking should be clarified. The commenters indicated that, as written, § 72.46(e) could be read to preclude repetitive reviews only where the CoC had already been issued (*i.e.,* ''cask design issues previously addressed by the Commission when it issued the CoC'') [emphasis original].

The commenters indicated that there will be cases where the site-specific license proceeding and the CoC review are proceeding in parallel. Because the site-specific license cannot be issued until the CoC for the design referenced in the site-specific application has also been issued, there are no safety issues involved with eliminating repetitive cask design reviews in the site-specific licensing proceeding. These safety issues can still be raised in the CoC review process. Those issues need not be repetitively reviewed and resolved in the parallel site-specific licensing proceeding. The commenters believe that allowing those issues to be raised in both of these proceedings would create the specter of inconsistent results as well as duplicative and wasteful use of resources by the NRC staff and applicants. The commenters also stated that, ''[t]he NRC's CoC review will encompass all safety issues which the Commission, in its expert judgment, determines are needed to adequately protect public health and safety.''

The commenters argued that ''[i]t is a basic principle of administrative law that an agency's choice to proceed by rulemaking or by case specific adjudication is within the agency's discretion.'' Furthermore, ''[d]eferring consideration of issues from site-specific [licensing] proceedings to a generic proceeding [*i.e.,* rulemaking] is well established in NRC and judicial case law. This is the case even when the generic proceedings are still in progress. Commission decisions have long held that 'licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.' '' Therefore, the commenters concluded that ''[l]ogic, NRC precedent, and federal case law all suggest that cask design issues should not be reviewed in site-specific proceedings whether the CoC is issued prior to, during, or after the site-specific [licensing] proceeding.''

Response: The NRC agrees with the commenters that NRC precedent and Federal case law identified by the commenter support the position that cask design issues should not be

reviewed in a site-specific licensing proceeding whether the CoC is issued before, during, or after the site-specific licensing proceeding. The NRC agrees that cask design issues can be adequately raised by the public in the context of the Part 72 rulemaking process approving the design and that the NRC staff can still adequately review, evaluate, and disposition any such issues during this process. As stated in the proposed rule, the opportunity of the public to comment on cask designs will not be affected by this rulemaking. However, design interface issues between the referenced cask design and specific site characteristics (*e.g.,* meteorological, seismological, radiological, and hydrological), or changes to the cask's approved design, must be addressed by the applicant in its application and may be raised as potential issues at a licensing proceeding. Therefore, in the final rule, § 72.46(e) has been revised to read as suggested by the commenter.

Finally, the NRC agrees with the commenters that if an applicant chooses to incorporate by reference in its application for a specific license a cask design that has not yet been approved by the NRC, then the NRC will not issue the specific license to the applicant—assuming that all other NRC review and approval actions have been completed—until after the referenced cask design has been added to the list of approved cask designs contained § 72.214.

Comment B.2: Three commenters, a licensee, NEI, and an applicant for a license, while agreeing with the proposed § 72.46(e) also indicated that the NRC should clarify in the Statements of Consideration for the final rule the process for requesting changes to an approved cask design. The commenters believe that if a cask design issue was, in fact, not addressed in connection with the issuance of the CoC, the proper mechanism to raise that cask design issue after the CoC was issued would be to file either a request for action with the Commission pursuant to § 2.206, or a petition to amend the rule adopting the CoC pursuant to § 2.802. Alternatively, an attempt to raise a cask design issue involving a cask which had received a CoC, in a site-specific proceeding, could be made subject to § 2.758, which establishes the process for handling challenges to the NRC regulations in individual licensing proceedings.

Response: The NRC agrees with the commenters that for a cask design currently under NRC review, individuals who wish to raise issues on the cask design may do so during the review process or by commenting on the cask design when the proposed rule to approve the design is published for public comment in the **Federal Register**. After a cask design is approved by rulemaking, individuals who wish to raise new issues should do so via the petition provision contained in either § 2.206 or § 2.802. Finally, the NRC also agrees that individuals may challenge NRC regulations in an individual licensing proceeding under the provisions of § 2.758.

C. Permitting CoC Applicants To Begin Fabrication Under an NRC-Approved QA Program Before Issuance of the CoC

Comment: Two commenters, NEI and an applicant for a license, supported allowing applicants for a CoC to begin cask fabrication before issuance of a CoC, if fabrication is done under an NRC-approved quality assurance program. The commenters believe that the practice of fabrication in advance of issuance of a CoC results in no increase in risk to the public, because an applicant cannot load casks that do not conform to the issued CoC. The commenters further recognized that this practice places the applicant at economic risk if the CoC contains changes not considered at the time the cask was fabricated.

Response: No response required.

Summary of Final Amendments to the Proposed Rule

In § 72.13, paragraphs (a), (b), and (d) remain unchanged from the proposed rule amendments. Paragraph (c) is changed to incorporate §§ 72.214, 72.240(a) and to exclude §§ 72.44(d) and (e), 72.52(c), 72.54(d) through (m), and 72.192, and is revised to read as follows:

(c) The following sections apply to activities associated with a general license: §§ 72.1; 72.2(a)(1), (b), (c), and (e); 72.3 through 72.6(c)(1); 72.7 through 72.13(a) and (c); 72.30(c) and (d); 72.32(c) and (d); 72.44(b) and (f); 72.48; 72.50(a); 72.52(a), (b), (d), and (e); 72.60; 72.62; 72.72 through 72.80(f); 72.82 through 72.86; 72.104; 72.106; 72.122; 72.124; 72.126; 72.140 through 72.176; 72.190; 72.194; 72.210 through 72.220, and 72.240(a).

In § 72.46, paragraph (e) is revised to read as follows:

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of a spent fuel storage cask for which NRC approval pursuant to subpart L of this part has been issued or is being sought, the scope of any public hearing held to consider the application will not include any cask design issues.

Sections 72.86, 72.140, 72.234, and 72.236, remain unchanged from the proposed rule amendments.

Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule to amend 10 CFR 72.140, 72.234, and 72.236 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this final rule is classified as Category NRC. Compatibility is not required for Category NRC regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is amending its regulations on spent fuel storage in those sections of 10 CFR part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate. This final rule eliminates the necessity for repetitious part 72 specific licensing proceeding reviews of cask design issues that the Commission previously considered, or is considering, and resolved during approval of the cask design. This final rule also allows an applicant for a CoC to begin cask fabrication at its risk before the CoC is issued. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(2) and (3). This action represents amendments to the regulations which are corrective or of a minor or nonpolicy nature and do not substantially modify the existing

regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule would decrease the burden on licensees by eliminating the requirement to request an exemption to begin cask design before a license is issued, and by allowing all licensees and CoC holders to reference previously-approved QA programs. The public burden reduction for this information collection would average 200 hours per exemption request. However, because no burden has previously been approved for exemption requests and no licensees are expected to reference previously approved QA programs in the foreseeable future, no burden reduction can be taken for this rulemaking. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

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

Regulatory Analysis

Statement of the Problem and Objective

The Commission's regulations at 10 CFR part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in ISFSIs (45 FR 74693; November 12, 1980). In 1990, the Commission amended part 72 to include a process for approving the design of spent fuel storage casks and issuance of a CoC (Subpart L); and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for storage of spent nuclear fuel (55 FR 29181; July 17, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which of the part 72 requirements, other than those in Subpart K, are applicable to general licensees and certificate holders, respectively. This final rule will resolve that ambiguity.

In addition, the Commission has identified two aspects of part 72 where it would be desirable to reduce the regulatory burden for applicants, NRC staff, and hearing boards and to afford additional flexibility to applicants for a specific license or CoC.

First, this final rule will eliminate the necessity for repetitious reviews of cask design issues in a part 72 specific licensing proceeding (§ 72.46), where the previously-approved cask design has been incorporated by reference into the application. In addition, repetitive reviews will also be eliminated in those cases where the site-specific licensing proceeding and CoC review are proceeding in parallel. The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage cask designs previously approved by the NRC. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report for a cask design previously approved by the NRC under the provisions of Subpart L. The Commission believes previously-reviewed cask design issues should be excluded from the scope of a license proceeding. This is because the public had the right to question the adequacy of the cask design, during the approval process under Subpart L. The right of the public to comment on cask designs would not be affected by this rulemaking. For new cask design issues, this rulemaking would not limit the scope of the staff's review of the application or of license hearings. For example, a cask's previously-reviewed and -approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.,* meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design must be addressed by the applicant in its application and may be raised as issues at a potential hearing. In addition, for the situation previously mentioned, where the CoC review is proceeding in parallel with the site-specific license proceeding, there is no safety issue involved with eliminating repetitive cask design reviews, since the site-specific license cannot be issued until the CoC for the design referenced in the site-specific application has also been issued. Allowing those issues to be raised in both the licensing proceeding and CoC review process could create the specter of inconsistent results as well as duplicative and wasteful use of resources by the NRC staff and applicants. Furthermore, the NRC's CoC review will encompass all safety issues which the Commission determines are needed to adequately protect public health and safety. Deferring consideration of these issues from site-specific proceedings to a generic proceeding is well established in NRC precedent and Federal case law which suggests that cask design issues should not be reviewed in site-specific proceedings regardless whether the CoC is issued before, during, or after the site-specific licensing proceeding.

The NRC notes that, for a cask design currently under NRC review, individuals who wish to raise issues on the cask design may do so during the review process or by commenting on the cask design when the proposed rule to approve the design is published for public comment in the **Federal Register**. After a cask design is approved by rulemaking, individuals who wish to raise new issues should do so via the petition provision contained in either §§ 2.206 or 2.802. Individuals who wish to challenge NRC regulations in an individual licensing proceeding can do so under the provisions of § 2.758.

Second, the final rule permits an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e,* the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this final rule would eliminate NRC's disparate treatment between general and specific licensees. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense or security, and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. Therefore, this rulemaking would eliminate the need for such exemption requests.

This final rule also revises the QA regulations in Subpart G of part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication before issuance of the cask CoC, must conduct cask fabrication under an NRC-approved QA program.

Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this final rule is a conditional relaxation to permit fabrication before the CoC is issued. Because NRC staff would approve the applicant's QA program as part of the issuance of a CoC, staff approval of the QA program before fabrication is a question of timing (*i.e.,* when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or schedule risks associated with fabrication of casks before issuance of the CoC would be borne by the applicant. The Commission believes that the final rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants before issuance of the license or CoC. This rule requires that a cask, for which fabrication was initiated before issuance of the CoC, must conform to the issued CoC before it may be used.

This final rule also requires an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this final rule will impose a separate requirement, rather it would require different timing on when the QA program is approved.

This final rule also revises § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this final rule, both licensees and certificate holders are required to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes this final rule's increase in flexibility and change in timing of approval of a QA program are not a backfit.

The Commission expects that any risks associated with fabrication (*e.g.,* rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. In particular, the NRC will require that a cask fabricated before the CoC was issued conform with the issued CoC before spent fuel is loaded in the cask. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

Identification and Analysis of Alternative Approaches to the Problem

• *Option 1*—Conduct a rulemaking that would address the regulatory problems as described above.

First, this final rulemaking specifies the sections in Part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. This eliminates the need to resolve, on a case-by-case basis, questions on which Part 72 sections are applicable to those activities. The final rule is administrative in nature and, other than the cost of rulemaking, would have no impact.

Second, this rulemaking reduces the regulatory burden on applicants, staff, and hearing board resources relating to any § 72.46 licensing proceedings involving cask design issues associated with an application for a specific license, where the cask design has been previously approved by the NRC or is currently under review. Elimination of the need for repetitious reviews of cask design issues and licensing hearings on these same cask design issues together would save 1.0 FTE of applicant effort and 0.1 FTE of staff effort for each specific license application received. NRC expects to review two applications in 2000, three applications in 2001, and four applications each in 2002 and 2003. While applicants for a license are currently allowed to incorporate by reference information on cask design information, this rulemaking reduces applicant burden associated with providing additional information on the cask design and responding to licensing board contentions on issues which have been previously reviewed and resolved.

Third, this rulemaking also provides increased flexibility to applicants for a CoC by allowing them to begin cask fabrication, before the CoC is issued. This rulemaking reduces the burden on applicants for a CoC associated with submission of requests for exemption from § 72.234(c). Certificate holders have requested these exemptions to take advantage of favorable business conditions (*i.e.,* they want to begin fabrication of casks as soon as possible to meet their contract obligations). Elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) will save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) will be received each year in 2000 and beyond. This rulemaking also eliminates the disparate treatment of general and specific licensees under Part 72, with respect to fabrication of spent fuel storage casks. This rulemaking also reduces staff burden associated with review of such exemption requests. Because a certificate holder is currently required by § 72.140(c)(3) to obtain NRC approval of its QA program before commencing fabrication, and the staff is currently required to review and approve these programs, no increase in applicant burden or staff resources will occur with respect to the final change to § 72.140(c)(3). However, the timing of the staff review and approval of the QA program would change.

The impact of this option consists primarily of a reduction in regulatory burden on an applicant for a specific license, a reduction in regulatory burden and increase in regulatory flexibility for an applicant for a cask design, and a reduction in the expenditure of NRC resources involved in reviewing applications for a specific license, supporting license hearings, and reviewing requests for exemption from § 72.234(c). This option will result in the expenditure of NRC resources to conduct this rulemaking.

• *Option 2*—No action.

The benefit of the no action alternative is that NRC resources will be conserved because no rulemaking will be conducted. The impact of this alternative is that the regulatory problems described above would not be addressed. Instead, applicant and staff resources will continue to be expended on repetitious reviews of previously-approved cask designs, conducting licensing hearings on previously-approved cask design issues, and processing requests for exemption from § 72.234(c), to allow fabrication of casks.

Estimation and Evaluation of Values and Impacts

The clarification of which Part 72 sections apply to specific licensees, applicants for a specific license, general licensees, certificate holders, and applicants for a CoC alone will have no impact other than the cost of rulemaking, because this action is administrative in nature.

The elimination of repetitious reviews of cask design issues in a Part 72 specific license proceeding (§ 72.46) and parallel CoC reviews will save 1.0 FTE of applicant effort and 0.1 FTE of staff effort for each license application received. NRC expects to review two

applications in 2000, three applications in 2001, and four applications each in 2002 and 2003.

The elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) will save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) will be received each year in 2000 and beyond.

Presentation of Results

The recommended action is to adopt the first option because it will set forth a clear regulatory base for Part 72 general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC.

The recommended action will eliminate the need for repetitious licensing proceeding adjudication of cask design issues that the Commission has previously reviewed in approving the cask design, or is currently reviewing, when an applicant for a specific license has incorporated by reference a cask design that has been approved, or is under review, by the Commission under the provisions of Subpart L. This is because the public has the right to question the adequacy of the cask design during the approval process under Subpart L. The right of the public to comment on cask designs will not be affected by this rulemaking. This final rule also eliminates repetitive reviews in those cases where the site-specific licensing proceeding and CoC review are proceeding in parallel. In addition, the rights of the public to petition the Commission under §§ 2.206 and 2.802 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking. The Commission considers rereview of cask design issues which have been previously evaluated and dispositioned as an unnecessary regulatory burden on applicants and an unnecessary expenditure of staff and hearing board resources. For example, the cask's previously-reviewed and -approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.,* meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design must be addressed by the applicant in its application and may be raised as issues at a potential hearing. Therefore, this action has no safety impact.

The recommended action will permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (i.e, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this final rule will eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask before issuance of the CoC, comments would be requested on the need for a general licensee to also begin fabrication of a cask before the CoC is issued. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense or security, and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication will also be received. Therefore, this rulemaking will eliminate the need for such exemption requests.

This final rule is revising the QA regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this final rule is a conditional relaxation to permit fabrication before the CoC is issued. Because NRC staff will approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program before fabrication is a question of timing (i.e., when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks before issuance of the CoC will be borne by the applicant. The Commission believes that the final rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants before issuance of the license or CoC. This rule requires that a cask, for which fabrication was initiated before issuance of the CoC, must conform to the issued CoC before it may be used.

This final rule requires an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this final rule will impose a separate requirement, rather it will require different timing on when the QA program is approved.

This final rule also revises § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC. In addition, the Commission expects that any existing QA program which is used by these persons, in lieu of submitting a new Part 72 QA program, will fully comply with the requirements of Part 72, Subpart G.

As a result of this final rule, both licensees and certificate holders are required to conduct any fabrication activities under an NRC-approved QA program. The Commission believes this final rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

The Commission expects that any risks associated with fabrication (*e.g.,* rewelding, reinspection, or even abandonment of the cask) will be borne by the applicant. In particular, the NRC will require that a cask fabricated before the CoC was issued conform with the issued CoC. Requiring an applicant to conform a fabricated cask to the issued CoC will not be subject to the backfit review provisions of § 72.62.

The total cost of this rulemaking to the NRC is estimated at 1.9 FTE. The total savings to the NRC for this rulemaking is estimated at 1.3 FTE over a 4-year period (2000 through 2003). The total savings to applicants is estimated at 13.0 FTE over a 4-year period. Therefore, this action is considered to be cost beneficial to applicants and will improve the efficiency and effectiveness of the NRC.

Consequently, the Commission believes public confidence in the safe storage of spent fuel at independent spent fuel storage installations will not be adversely affected by this rulemaking.

Decision Rationale

The rationale is to proceed with this final rulemaking. This rulemaking will save both staff and applicant resources as discussed above.

The clarification of the provisions of Part 72 and their application to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC is administrative in nature and has no safety impacts.

The elimination of the need for repetitious license hearings on cask design issues, that the NRC has previously reviewed, or is currently reviewing, and approved in an application for a CoC, including those instances where the site-specific licensing proceeding and CoC review are proceeding in parallel, will have no safety impacts. The public's right to comment on cask design issues, through the Subpart L cask approval process, will remain unchanged.

The flexibility to begin cask fabrication before the NRC issues the CoC, when combined with the requirement that cask fabrication must be performed under an NRC-approved QA program, will have no safety impacts.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule clearly specifies which sections of Part 72 apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate and allows these persons to determine which Part 72 regulations apply to their activity. This clarification eliminates the ambiguity that now exists. This final rule also eliminates repetitious licensing proceeding reviews of cask design issues, that were under review, or previously reviewed and approved by the NRC, when the applicant for a specific license incorporates by reference information on a cask design that was previously approved, or under review, by the NRC. Finally, this final rule allows applicants for a CoC to begin fabrication of a cask design before the NRC has issued a CoC. Applicants desiring to begin fabrication shall use an NRC-approval QA program. The requirement to obtain NRC approval of the applicant's QA program is not considered an additional burden. An applicant who has been issued a CoC, and is then considered a certificate holder, is currently required by § 72.140(c)(3) to obtain NRC approval of its QA program before fabrication or testing is commenced; consequently, no actual increase in burden occurs. Similarly, an applicant for a specific license is currently required by § 72.140(c)(2) to obtain NRC approval of its QA program before receipt of spent fuel or high-level waste; consequently, no actual increase in burden occurs. This final rule does not impose any additional obligations on entities that may fall within the definition of ''small entities'' as set forth in Section 601(6) of the Regulatory Flexibility Act; or within the definition of ''small business'' as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11,1985 (60 FR 18344).

Small Business Regulatory Enforcement Fairness Act

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

Backfit Analysis

The NRC has determined that the backfit rule, § 72.62, does not apply to this final rule. Because these amendments do not involve any provisions that would impose backfits as defined in § 72.62(a), a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.13 is added to Subpart A to read as follows:

§ 72.13 Applicability.

(a) This section identifies those sections, under this part, that apply to the activities associated with a specific license, a general license, or a certificate of compliance.

(b) The following sections apply to activities associated with a specific license: §§ 72.1; 72.2(a) through (e); 72.3 through 72.13(b); 72.16 through 72.34; 72.40 through 72.62; 72.70 through 72.86; 72.90 through 72.108; 72.120 through 72.130; 72.140 through 72.176; 72.180 through 72.186; 72.190 through 72.194; and 72.200 through 72.206.

(c) The following sections apply to activities associated with a general license: §§ 72.1; 72.2(a)(1), (b), (c), and (e); 72.3 through 72.6(c)(1); 72.7 through 72.13(a) and (c); 72.30(c) and (d); 72.32(c) and (d); 72.44(b) and (f); 72.48; 72.50(a); 72.52(a), (b), (d), and (e); 72.60; 72.62; 72.72 through 72.80(f); 72.82 through 72.86; 72.104; 72.106; 72.122; 72.124; 72.126; 72.140 through 72.176; 72.190; 72.194; 72.210 through 72.220, and 72.240(a).

(d) The following sections apply to activities associated with a certificate of compliance: §§ 72.1; 72.2(e) and (f); 72.3; 72.4; 72.5; 72.7; 72.9 through 72.13(a) and (d); 72.48; 72.84(a); 72.86; 72.124; 72.140 through 72.176; 72.214; and 72.230 through 72.248.

3. In § 72.46, paragraph (e) is added to read as follows:

§ 72.46 Public hearings.

* * * * *

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of a spent fuel storage cask for which NRC approval pursuant to subpart L of this part has been issued or is being sought, the scope of any public hearing held to consider the application will not include any cask design issues.

4. In § 72.86, paragraph (b) is revised to read as follows:

§ 72.86 Criminal penalties.

* * * * *

(b) The regulations in Part 72 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.13, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.46, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.238, and 72.240.

5. In § 72.140, paragraphs (c) and (d) are revised to read as follows:

§ 72.140 Quality assurance requirements.

* * * * *

(c) *Approval of program.*

(1) Each licensee, applicant for a license, certificate holder, or applicant for a CoC shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, in accordance with § 72.4.

(2) Each licensee shall obtain Commission approval of its quality assurance program prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS. Each licensee or applicant for a specific license shall obtain Commission approval of its quality assurance program before commencing fabrication or testing of a spent fuel storage cask.

(3) Each certificate holder or applicant for a CoC shall obtain Commission approval of its quality assurance program before commencing fabrication or testing of a spent fuel storage cask.

(d) *Previously-approved programs.* A quality assurance program previously approved by the Commission as satisfying the requirements of Appendix B to part 50 of this chapter, subpart H to part 71 of this chapter, or subpart G to this part will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee, applicant for a license, certificate holder, and applicant for a CoC who is using an Appendix B or subpart H quality assurance program shall also meet the recordkeeping requirements of § 72.174. In filing the description of the quality assurance program required by paragraph (c) of this section, each licensee, applicant for a license, certificate holder, and applicant for a CoC shall notify the NRC, in accordance with § 72.4, of its intent to apply its previously-approved quality assurance program to ISFSI activities or spent fuel storage cask activities. The notification shall identify the previously-approved quality assurance program by date of submittal to the Commission, docket number, and date of Commission approval.

6. In § 72.234, paragraph (c) is revised to read as follows:

§ 72.234 Conditions of approval.

* * * * *

(c) An applicant for a CoC may begin fabrication of spent fuel storage casks before the Commission issues a CoC for the cask; however, applicants who begin fabrication of casks without a CoC do so at their own risk. A cask fabricated before the CoC is issued shall be made to conform to the issued CoC before being placed in service or before spent fuel is loaded.

* * * * *

7. Section 72.236 is amended by revising the introductory text to read as follows:

§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.

The certificate holder and applicant for a CoC shall ensure that the requirements of this section are met.

* * * * *

Dated at Rockville, Maryland, this 15th day of August, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–21229 Filed 8–18–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–117–AD; Amendment 39–11870; AD 2000–16–13]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This AD requires you to inspect the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and requires you to adjust the free play as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent the inability to steer the airplane because of excessive free play in the steering linkage. This excessive free play could then result in loss of control of the airplane during take-off, landing, or taxi operations.

DATES: This AD becomes effective on September 29, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of September 29, 2000.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–117–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Caused This AD?

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reported a recent incident where the operator of one of the affected airplanes lost control while the airplane was on the ground and veered off the runway. Inspection of this airplane following the incident revealed an unacceptable amount of free play in the nose landing gear steering linkage because of excessive wear in the steering selector differential.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 23, 1999 (64 FR 19930). The NPRM proposed to require you to inspect the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and adjust as necessary.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with British Aerospace Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2: December 17, 1998.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected in a timely manner, could result in loss of control of the airplane during take-off, landing, or taxi operations.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We received one comment in favor of the NPRM and no comments on our determination of the cost to the public.

Has the Manufacturer Issued Revised Service Information?

Operator reports that indicate it is difficult to accomplish the steering backlash check caused British Aerospace to revise Alert Service Bulletin 32–A–JA980840. Improved procedures are included in British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999.

The FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above, including the referenced service bulletin revision, and determined that:

—The actions proposed in the NPRM should be accomplished in accordance with the revised service information;

—Air safety and the public interest require the adoption of the rule as proposed except for the incorporation of this service information and minor editorial corrections; and

—These changes provide the intent that was proposed in the NPRM for correcting the unsafe condition and do not impose any additional burden over what was proposed in the NPRM.

Are There Differences Between This AD and the Service Information?

British Aerospace Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 3: May 5, 1999, specifies calendar compliance times based on the number of landings each airplane has accumulated. In order to keep the compliance time equal for all airplane operators, we are requiring the inspection when the airplane has 10,000 landings. In order to assure that no affected airplane is inadvertently grounded, we are utilizing 100 landings as a grace period. The compliance time is as follows:

''Upon accumulating 10,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later.''

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 350 airplanes in the U.S. registry, and that it will take approximately 6 workhours per airplane to accomplish the inspection at an average labor rate of $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $126,000, or $360 per airplane.

What About the Cost of any Adjustments?

These figures only take into account the costs of the inspection and do not take into account the costs associated with any adjustments that will be necessary if the free play is not within acceptable limits. The adjustment should take approximately 1 workhour at $60 per hour (cost of $60 per airplane). We have no way of determining the number of airplanes that would need adjustments to the nose wheel steering system based on the results of the inspection required in this AD.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–16–13 British Aerospace: Amendment 39–11870; Docket No. 98–CE–117–AD.

(a) *What airplanes are affected by this AD?* This AD applies to HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the inability to steer the airplane because of excessive free play in the steering linkage. This excessive free play could then result in loss of control of the airplane during take-off, landing, or taxi operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Inspect the nose wheel steering system of assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, as specified in the service information.	Upon accumulating 10,000 landings or within the next 100 landings after September 29, 2000 (the effective date of this AD), whichever occurs later.	Accomplish this inspection in accordance with the A. *Inspection* portion of the ACCOMPLISHMENT INSTRUCTIONS section of British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999.
(2) Adjust the free play between the steering handle or knob and the nose wheels if it is not within the acceptable limits.	Required before further flight after the inspection where the free play was not within the acceptable limits.	Accomplish in accordance with the B. *Rectification* portion of the ACCOMPLISHMENT INSTRUCTIONS section of British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999.

Note: If the number of landings is unknown, you may use hours time-in-service (TIS) by dividing 10,000 and 100 by 0.75. If hours TIS are utilized to calculate the number of landings, this would calculate the 10,000 landings compliance time to 13,333 hours TIS; and the 100 landings grace period compliance time to 133 hours TIS.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You may contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on September 29, 2000.

Issued in Kansas City, Missouri, on August 10, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20776 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–62–AD; Amendment 39–11867; AD 2000–16–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires repetitive inspections to check for backlash of the spherical bearing of the active aileron servo-controls, and follow-on corrective actions, if necessary. This amendment also provides optional terminating action for the repetitive inspections. This action is necessary to detect and correct excess backlash of the spherical bearing of the active aileron servo-controls, which could result in failure of the active aileron servo-controls and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2000.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on June 14, 2000 (65 FR 37315). That action proposed to require repetitive

inspections to check for backlash of the spherical bearing of the active aileron servo-controls, and follow-on corrective actions, if necessary. The action also proposed to provide for optional terminating action for the repetitive inspections.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,600, or $1,200 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2000–16–11 Airbus Industrie: Amendment 39–11867. Docket 2000–NM–62–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category, except those airplanes on which Airbus Modification 47433 (Airbus Service Bulletin A330–27–3075 or A340–27–4081) or Airbus Modification 45512 (Airbus Service Bulletin A330–27–3054 or A340–27–4062) 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 (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 detect and correct excess backlash of the spherical bearing of the active aileron servo-controls, which could result in failure of the active aileron servo-control and consequent reduced controllability of the airplane, accomplish the following:

Inspection

(a) Perform an inspection to check for backlash of the spherical bearing of the active aileron servo-controls, in accordance with Airbus Service Bulletin A330–27–3073, Revision 01 (for Model A330 series airplanes), or A340–27–4079, Revision 01 (for Model A340 series airplanes), each dated January 18, 2000; as applicable; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that, as of the effective date of this AD, have accumulated 13,000 total flight hours or less: Perform the inspection within 6 months after the effective date of this AD, or within 6 months after accumulating 9,000 total flight hours, whichever occurs later.

(2) For airplanes that, as of the effective date of this AD, have accumulated more than 13,000 total flight hours: Perform the inspection within 3 months after the effective date of this AD.

Repetitive Inspections

(b) If, during the inspection required by paragraph (a) of this AD, no backlash is detected, or if any backlash is detected that is less than or equal to 0.2 millimeter (mm) (0.0078 inch) on all active aileron servo-controls, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months or until the actions of paragraph (d) of this AD are accomplished on all active aileron servo-controls.

Corrective Actions

(c) If, during any inspection required by paragraph (a) or (b) of this AD, any backlash is detected that is more than 0.2 mm (0.0078 inch), prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD, in accordance with Airbus Service Bulletin A330–27–3073, Revision 01 (for Model A330 series airplanes), or A340–27–4079, Revision 01 (for Model A340 series airplanes); each dated January 18, 2000; as applicable.

(1) Replace discrepant active aileron servo-controls with new ECP7 standard servo-controls in accordance with the applicable service bulletin, and repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months or until the requirements of paragraph (d) of this AD are accomplished; or

(2) Replace discrepant active servo-controls with ECP8 or ECP9 standard servo-controls, in accordance with the applicable service bulletin.

Note 2: Any inspection or replacement accomplished prior to the effective date of this AD, in accordance with Airbus Service Bulletin A330–27–3073 (for Model A330 series airplanes) or A340–27–4079 (for Model A340 series airplanes), each dated August 31, 1999, is considered acceptable for compliance with the applicable requirement specified by this AD.

Optional Terminating Action

(d) Replacement of all active servo-controls with ECP8 or ECP9 standard servo-controls, in accordance with Airbus Service Bulletins A330–27–3075, dated September 24, 1999, and A330–27–3054, Revision 01, dated November 8, 1999 (for Model A330 series

airplanes); or A340–27–4081, dated September 24, 1999, and A340–27–4062, Revision 01, dated November 8, 1999 (for Model A340 series airplanes); as applicable; constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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 actions shall be done in accordance with Airbus Service Bulletin A330–27–3073, Revision 01, dated January 18, 2000; Airbus Service Bulletin A340–27–4079, Revision 01, dated January 18, 2000; Airbus Service Bulletin A330–27–3075, dated September 24, 1999; Airbus Service Bulletin A330–27–3054, Revision 01, dated November 8, 1999; Airbus Service Bulletin A340–27–4081, dated September 24, 1999; and Airbus Service Bulletin A340–27–4062, Revision 01, dated November 8, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2000–014–108(B) and 2000–017–134(B), each dated January 12, 2000.

Effective Date

(h) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20775 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–50–AD; Amendment 39–11866; AD 2000–16–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A Military), and –40 Series Airplanes; and Model MD–10–10F and MD–10–30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes, and Model MD–10–10F and MD–10–30F series airplanes that requires performing repetitive ultrasonic inspections of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap; and follow-on actions. This AD also requires replacing all bolts with bolts made from Inconel, which constitutes terminating action for the repetitive inspection requirements. This amendment is prompted by an in-flight loss of the inboard flap assembly on an airplane during approach for landing. The actions specified by this AD are intended to prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane.

DATES: Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30021). That action proposed to require performing repetitive ultrasonic inspections of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap; and follow-on actions. That action also proposed to require replacing all bolts with bolts made from Inconel, which constitutes terminating action for the repetitive inspection requirements.

Comments

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

Support for Proposed AD

One commenter supports the proposed AD.

Request To Revise Compliance Time

One commenter requests that the threshold of both the initial and repetitive inspections of the flap hinge bolts be provided in terms of landings rather than calendar days. The commenter did not offer a reason for its request. The FAA does not concur. We assume that specifying the compliance time in flight hours or landings would fit more easily into a maintenance program. We have determined that the cause of the identified unsafe condition is stress corrosion cracking of the attachment bolts. Stress corrosion cracking is dependent upon calendar time not on flight hours or landings accumulated on an airplane. Therefore, no change to the final rule is necessary.

Explanation of Change to the Applicability of the Proposed AD

On May 9, 2000 (i.e., after issuance of the NPRM), the FAA issued a Type Certificate (TC) for McDonnell Douglas Model MD–10–10F and MD–10–30F series airplanes. Model MD–10 series airplanes are Model DC–10 series airplanes that have been modified with an Advanced cockpit. The H–11 attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly installed on Model MD–10–10F and MD–10–30F series airplanes (before or after the modifications necessary to meet the type design of a Model MD–10 series airplane) are identical to those on the affected Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition. In addition, the manufacturer's fuselage number and factory serial number are not changed during the conversion from a Model DC–10 to Model MD–10. We find that Model MD–10–10F and MD–10–30F series airplanes were not specifically identified by model in the applicability of the NPRM; however, they were identified by manufacturer's fuselage numbers in McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999 (which was referenced in the applicability statement of the AD for determining the specific affected airplanes). Therefore, we have revised the applicability throughout the final rule to include Model MD–10–10F and MD–10–30F series airplanes.

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 as proposed 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 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry will be affected by this AD.

It will take between 2 and 8 work hours per airplane to accomplish the required inspection/torque verification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection/torque verification required by this AD on U.S. operators is estimated to be between $29,280 and $117,120, or between $120 and $480 per airplane, per inspection cycle.

It will take approximately 288 work hours per airplane to accomplish the required bolt replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,987 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $4,945,148, or $20,267 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2000–16–10 McDonnell Douglas: Amendment 39–11866. Docket 2000–NM–50–AD.

Applicability: Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes; and Model MD–10–10F and MD–10–30F series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Within 2 months after the effective date of this AD, perform an ultrasonic inspection of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verify the torque of the attaching bolts on the inboard support on the outboard flap, in accordance with McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999.

(1) If no failed bolt is found, repeat the ultrasonic inspection thereafter at intervals not to exceed 6 months.

(2) If any failed bolt is found, prior to further flight, replace the bolt and associated parts with a new Inconel bolt and new associated parts in accordance with the service bulletin, except as provided by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD for that bolt.

(i) If an Inconel bolt is not available for accomplishment of the replacement,

replacement with a new H–11 steel bolt is acceptable provided that operators repeat the ultrasonic inspection thereafter at intervals not to exceed 6 months until the requirements of paragraph (b) of this AD are accomplished.

(ii) If a PLI washer is not available for accomplishment of the Inconel replacement, a new Inconel bolt can be temporarily installed without a new PLI washer provided that the bolt is torqued to the applicable value specified in the service bulletin. Within 6,000 flight hours after an Inconel bolt is torqued, replace the PLI washer with a new washer in accordance with the service bulletin.

Bolt Replacement

(b) Within 2 years after accomplishing the initial inspection required by paragraph (a) of this AD, accomplish the action specified in paragraph (a)(2) of this AD for all H–11 bolts. Accomplishment of the replacement of all H–11 bolts with Inconcel bolts constitutes terminating action for the requirements of this AD.

Spares

(c) As of 2 years after the effective date of this AD, no person shall install, on any airplane, an H–11 steel bolt, part number 71658–8–44, 71658–7–44, 71658–7–54, 71658–7–56, 71658–7–29, 71658–9–31, 71658–9–34, 71658–9–38, 71658–9–41, 71658–10–41, 71658–7–26, 71658–7–27, or 71658–8–29, on the inboard or outboard flap assembly.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angles ACO.

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

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20774 Filed 8–18–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–31–AD; Amendment 39–11868; AD 2000–16–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45, –50, –80A, –80C2, and –80E1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines with certain high pressure compressor rotor (HPCR) stage 3–9 spools installed. This action requires initial ultrasonic and eddy current inspections of certain HPCR stage 3–9 spools for cracks. This amendment is prompted by an uncontained failure of an HPCR 3–9 spool. The actions specified in this AD are intended to detect cracks which can cause separation of the HPCR stage 3–9 spool and result in an uncontained engine failure.

DATES: Effective September 5, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7147, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: On June 7, 2000, a Boeing 767 experienced an uncontained engine failure of a CF6–80C2 engine during takeoff. That failure resulted in a rejected takeoff. Results of an investigation indicate that the failure was due to a crack that was located in the web of the 7th stage of the spool. The FAA has issued airworthiness directive (AD) 99–24–15 (64 FR 66554; November 29, 1999) that was effective on January 28, 2000, that requires an inspection program that includes an initial inspection of bores and webs of certain CF6 HPCR 3–9 spools at the next piece-part exposure after 1000 cycles-since-new (CSN). Since that AD was issued, additional data suggests that the compliance time for the initial inspection is not adequate. This AD will decrease the compliance times for the initial inspection for those spools. This AD does not reduce the initial inspection time for HPCR 3–9 spools part numbers 1333M66G10, 1782M22G04, 1854M95P08, 9136M89G28, and 9136M89G29 because of differences in manufacturing processes. The repetitive inspection schedule required by AD 99–24–15 remains in place for all HPCR 3–9 spools affected by that AD. These cracks, if not detected, could result in HPCR stage 3–9 spool separation, which can result in an uncontained engine failure and airplane damage.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following GE Alert Service Bulletins (ASB's):

- ASB CF6–50 72–A1108, Revision 3, dated November 12, 1999

- ASB CF6–80A 72–A0678, Revision 3, dated November 12, 1999
- ASB CF6–80C2 72–A0812, Revision 2, dated October 28, 1999
- ASB CF6–80C2 72–A0848, Revision 5, dated August 3, 2000
- ASB CF6–80E1 72–A0135, Revision 1, dated October 28, 1999
- ASB CF6–80E1 72–A0126, Revision 3, dated August 3, 2000

Those ASB's describe procedures for eddy current and ultrasonic inspections of HPCR stage 3–9 spools for cracks.

Determination of an Unsafe Condition

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to detect cracks which can cause separation of the HPCR stage 3–9 spool and result in an uncontained engine failure. This AD requires an initial inspection of spools with 10,500 or more CSN, within 500 cycles-in-service (CIS) after the effective date of this AD, by the next engine shop visit, or by May, 31, 2001, whichever occurs first. This AD also requires an initial inspection of spools with 7,000 CSN to 10,499 CSN within 1,000 CIS after the effective date of this AD, by the next shop visit, or by July 29, 2001, whichever occurs first. These initial inspections qualify the HPCR 3–9 spool as having been previously inspected when determining the repetitive inspection schedules under AD 99–24–15. The actions are required to be accomplished in accordance with the alert service bulletins described previously.

Immediate Adoption

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–31–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order No. 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–16–12 General Electric Company: Amendment 39–11868. Docket 2000–NE–31–AD.

Applicability

This airworthiness directive is applicable to General Electric Company (GE) CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines with high pressure compressor rotor stage 3–9 spools with the following part numbers (P/N's). These engines are installed on, but not limited to, Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series airplanes.

Engine model	HPCR 3–9 spool P/N
CF6–45/50 Series Engines	9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27, 9273M14G01, 9331M29G01, 9253M85G01, 9253M85G02
CF6–80A Series Engines	99136M89G10, 9136M89G11, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27
CF6–80C2 Series Engines	1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M52P01, 1781M53G01, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, 1854M95P07, 9380M28P05
CF6–80E1 Series Engines	1669M22G01, 1669M22G03, 1782M22G01, 1782M22G02

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) 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

Compliance with this AD is required as indicated below, unless already done.

To detect cracks which can cause separation of the HPCR stage 3–9 spool and result in an uncontained engine failure, perform the following inspections:

CF6–45/50 Series Engines

(a) For HPCR stages 3–9 spools installed in CF6–45/50 series engines that have not been inspected in accordance with AD 99–24–15, do the following:

Number of Cycles-Since-New (CSN)	Action	By the earliest of
(1) More than 7,000 CSN but fewer than 10,500 CSN after the effective date of this AD.	Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A1108, Revision 3, dated November 12, 1999.	(i) Within the next 1,000 cycles-in-service (CIS) after the effective date of this AD, OR (ii) At the next engine shop visit (ESV) after the effective date of the AD, OR (iii) Before July 29, 2001.
(2) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9273M14G01, 9331M29G01, 9253M85G01, 9253M85G02.	Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A1108, Revision 3, dated November 12, 1999.	(i) Within the next 500 CIS after the effective date of this AD, OR (ii) At the next ESV after the effective date of the AD, OR (iii) Before May 31, 2001.
(3) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27.	Replace with a serviceable HPCR 3–9 spool	(i) Within the next 500 CIS after the effective date of this AD, OR (ii) At the next ESV after the effective date of the AD, OR (iii) Before May 31, 2001.

(b) Remove any HPCR 3–9 spool from service that equals or exceeds the reject criteria established by ASB 72–A1108, Revision 3, dated November 12, 1999; and replace it with a serviceable spool before further flight.

CF6–80A Series Engines

(c) For HPCR stages 3–9 spools installed in CF6–80A series engines that have not been inspected in accordance with AD 99–24–15, do the following:

Number of cycles-since-new (CSN)	Action	By the earliest of
(1) More than 7,000 CSN but fewer than 10,500 CSN, after the effective date of this AD.	Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A0678, Revision 3, dated November 12, 1999.	(i) Within the next 1,000 CIS after the effective date of this AD, OR. (ii) At the next ESV after the effective date of the AD, OR. (iii) Before July 29, 2001.
(2) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G10, 9136M89G11.	Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A0678, Revision 3, dated November 12, 1999.	(i) Within the next 500 CIS after the effective date of this AD, OR. (ii) At the next ESV after the effective date of the AD, OR. (iii) Before May 31, 2001.
(3) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G20, 9136M89G21, 9136M89G22, 913M89G27.	Replace with a serviceable HPCR 3–9 spool	(i) Within the next 500 CIS after the effective date of this AD, OR. (ii) At the next ESV after the effective date of the AD, OR. (iii) Before May 31, 2001.

(d) Remove any HPCR 3–9 spool from service that equals or exceeds the reject criteria established by ASB 72–A0678, Revision 3, dated November 12, 1999, and replace it with a serviceable spool before further flight.

CF6–80C2 Series Engines

(e) For HPCR stages 3–9 spools installed in CF6–80C2 series engines that have not been inspected in accordance with both ASB 72–A0812, Revision 2, dated October 28, 1999; and ASB 72–A0848, Revision 5, dated August 3, 2000; or AD 99–24–15, do the following:

Number of cycles-since-new (CSN)	Action	By the earliest of
(1) More than 7,000 CSN but fewer than 10,500 CSN, after the effective date of this AD.	Eddy current and ultrasonic inspect the bores and webs for cracks in accordance with ASB 72–A0812, Revision 2, dated October 28, 1999; and ASB 72–A0848, Revision 5, dated August 3, 2000.	(i) Within the next 1,000 CIS after the effective date of this AD, OR (ii) At the next ESV after the effective date of the AD, OR (iii) Before July 29, 2001.

Number of cycles-since-new (CSN)	Action	By the earliest of
(2) 10,500 or more CSN, after the effective date of this AD.	Replace with a serviceable HPCR 3–9 spool	(i) Within the next 500 CIS after the effective date of this AD, OR (ii) At the next ESV after the effective date of the AD, OR (iii) Before May 31, 2001.

(f) Remove any HPCR 3–9 spool from service that equals or exceeds the reject criteria established by ASB 72–A0812, Revision 2, dated October 28, 1999; and ASB 72–A0848, Revision 5, dated August 3, 2000, and replace it with a serviceable spool before further flight.

CF6–80E1 Series Engines

(g) For HPCR stages 3–9 spools installed in CF6–80E1 series engines that have not been inspected in accordance with both ASB 72–A0135, Revision 1, dated October 28, 1999; and ASB 72–A0126, Revision 3, dated August 3, 2000; or AD 99–24–15, do the following:

Number of cycles-since-new (CSN)	Action	By the earliest of
(1) More than 7,000 CSN but fewer than 10,500 CSN, after the effective date of this AD.	Eddy current and ultrasonic inspect the bores and webs for cracks in accordance with ASB 72–A0126, Revision 3, dated August 3, 2000, and ASB 72–A0135, Revision 1, dated October 28, 1999..	(i) Within the next 1,000 CIS after the effective date of this AD, OR (ii) At the next ESV after the effective date of the AD, OR (iii) Before July 29, 2001.
(2) 10,500 or more CSN after the effective date of this AD.	Replace with a serviceable HPCR 3–9 spool	(i) Within the next 500 CIS after the effective date of this AD, OR (ii) At the next ESV after the effective date of the AD, OR (iii) Before May 31, 2001.

(h) Remove any HPCR 3–9 spool from service before further flight that equals or exceeds the reject criteria established by ASB 72–A0135, revision 1, dated October 28, 1999; or ASB 72–A0126, revision 3, dated August 3, 2000, and replace it with a serviceable spool.

Definitions

(i) For the purpose of this AD, an ESV is defined as any time an engine is introduced into a shop for the separation of a major engine flange.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

(l) The inspection shall be done in accordance with the following GE Alert Service Bulletins:

Document No.	Pages	Revision	Date
GE CF6–50 ASB No. 72–A1108 ..... Total pages: 15.	1–15	3	November 12, 1999.
GE CF6–80A ASB No. 72–A0678 ..... Total pages: 18.	1–18	3	November 12, 1999.
GE CF6–80C2 ASB No. 72–A0812 ..... Total pages: 13.	1–13	2	October 28, 1999.
GE CF6–80C2 ASB No. 72–A0848 ..... Total pages: 47.	1–47	5	August 3, 2000.
GE CF6–80E1 ASB No. 72–A0126 ..... Total pages: 47.	1–47	3	August 3, 2000.
GE CF6–80E1 ASB No. 72–A0135 ..... Total pages: 11.	1–11	1	October 28, 1999.

The incorporations by reference of ASB's No. CF6–50 72–A1108, Revision 3; CF6–80A 72–A0678, Revision 3; CF6–80C2 72–A0812, Revision 2; and CF6–80E1 72–A0135, Revision 1, were approved by the Director of the Federal Register on January 28, 2000 (64 FR 66554; November 29, 1999). The incorporations by reference of ASB's CF6–80C2 72–A0848, Revision 5; and CF6–80E1 72–A0126, Revision 3 were approved by the Director of the Federal Register on September 5, 2000, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(m) This amendment becomes effective on September 5, 2000.

Issued in Burlington, Massachusetts, on August 10, 2000.

David A. Downey,

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

[FR Doc. 00–20773 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–260–AD; Amendment 39–11873; AD 2000–16–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that currently requires a one-time inspection to determine the serial numbers of various switch modules on the overhead panel and control stand, and replacement of certain switch modules with new, improved modules. That AD also requires repetitive tests of the cargo fire extinguishing system, and one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches; and repair or replacement of switch modules with new improved modules, if necessary. This amendment revises the applicability of the existing AD. This action also requires replacement of the existing switch modules with new switch modules; replacement of the existing module assemblies with new module assemblies; or reworked module assemblies; as applicable. This amendment is prompted by the FAA's determination that certain switches are susceptible to contamination. The actions specified by this AD are intended to minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems.

DATES: Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 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: Mohamed Jamil, 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) 227–2677; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–20–01, amendment 39–9767 (61 FR 53035, October 10, 1996), which is applicable to certain Boeing Model 777–200 series airplanes, was published in the **Federal Register** on May 30, 2000 (65 FR 34420). The action proposed to revise the applicability of the existing AD. The action also proposed to require replacement of the existing switch modules with new switch modules; replacement of the existing module assemblies with new module assemblies; or reworked module assemblies; as applicable.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours (for Method I) or 9 work hours (for Method II) per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $12,785 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $321,655, or $13,985 per airplane (for Method I), or $306,475, or $13,325 per airplane (for Method II).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9767 (61 FR 53035, October 10, 1996), and by adding a new airworthiness directive (AD), amendment 39–11872, to read as follows:

2000–16–16 Boeing: Amendment 39–11873. Docket 97–NM–260–AD. Supersedes AD 96–20–01, Amendment 39–9767.

Applicability: Model 777–200 series airplanes, line numbers 1 through 85 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) 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 minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems, accomplish the following:

Replacement and Reidentification

(a) For Groups 1 and 2 airplanes identified in Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000, except as provided in paragraph (b) of this AD, within 12 months after the effective date of this AD, perform the actions in either paragraph (a)(1) or (a)(2) of this AD.

(1) Replace the existing switch modules with new switch modules (including changing the part number of the reworked module assemblies and control stand assembly) in accordance with Method I of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

(2) Replace the existing switch modules with new switch modules, and replace the existing module assemblies with new module assemblies or reworked module assemblies (including changing the part number of the control stand assembly), in accordance with Method II of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–31A0019, dated October 2, 1997; Revision 1, dated March 12, 1998; Revision 2, dated March 25, 1999; or Revision 3, dated January 27, 2000; are acceptable for compliance with the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(b) For Group 2 airplanes identified in Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000, on which a guarded toggle passenger oxygen switch has been installed: Accomplishment of the actions specified in paragraphs (a)(1) and (a)(2) of this AD is not required for the passenger oxygen switch or window heat/emergency light module assembly.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane, any part listed in the ''Existing Part Number'' column of the table listed in paragraph II.D., ''Existing Parts Accountability,'' of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

Alternative Methods of Compliance

(d)(1) 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.

(2) Alternative methods of compliance approved previously in accordance with AD 96–20–01, amendment 39–9767, are not considered to be approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000. 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.

Effective Date

(g) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20965 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–225–AD; Amendment 39–11872; AD 2000–16–15]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B 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 Saab Model SAAB 340B series airplanes. This action requires adjustment of the cargo baggage net, replacement of baggage net placards with new placards, and installation of certain new baggage net placards. This action is necessary to prevent failure of the cargo bulkhead floor attachments, which could result in damage to the airplane structure and possible injury to passengers and crewmembers. This action is intended to address the identified unsafe condition.

DATES: Effective September 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–225–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments also may be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–225–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. 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 Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B series airplanes. The LFV advises that it has received reports indicating that, on certain airplanes having a kinked bulkhead configuration, the cargo baggage net is installed such that the forward webbing of the net is too close to the aft face of the bulkhead. With this net installation, baggage may structurally overload the bulkhead's floor attachments. This condition, if not corrected, could result in failure of the cargo bulkhead floor attachments, damage to the airplane structure, and possible injury to passengers and crewmembers.

Related Rulemaking

The FAA has previously issued AD 98–15–23 (63 FR 39496, amendment 39–10449, July 6, 1998), which, for certain Saab Model SAAB 340B series airplanes, requires adjustment of the cargo baggage net, replacement of baggage net placards, and installation of new baggage net placards. Since issuance of that AD, the FAA has determined that additional airplanes (serial numbers 162, 163, and 171) are subject to the same unsafe condition addressed in that AD.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–25–244, Revision 01, dated May 5, 2000, which describes procedures for adjustment of the cargo baggage net, replacement of the baggage net placard on the aft face of the kinked bulkhead with a new placard, and installation of new placards on the right-hand cargo bay panel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–118 R1, dated May 5, 2000, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden 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 LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, 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 require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

None of the Saab Model SAAB 340B series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this AD would be $60 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 2000–NM–225–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2000–16–15 SAAB Aircraft AB: Amendment 39–11872. Docket 2000–NM–225–AD.

Applicability: Model SAAB 340B series airplanes, serial numbers 162, 163, and 171; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cargo bulkhead floor attachments, which could result in damage to the airplane structure and possible injury to passengers and crewmembers, accomplish the following:

Corrective Actions

(a) Within 3 months after the effective date of this AD, adjust the cargo baggage net; replace the baggage net placard on the aft face of the kinked bulkhead with a new placard; and install new placards on the right-hand cargo bay panel; in accordance with Saab Service Bulletin 340–25–244, Revision 01, dated May 5, 2000.

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, 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

(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.

Incorporation by Reference

(d) The actions shall be done in accordance with Saab Service Bulletin 340–25–244, Revision 01, dated May 5, 2000. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive (SAD) 1–118 R1, dated May 5, 2000.

(e) This amendment becomes effective on September 5, 2000.

Issued in Renton, Washington, on August 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20964 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–54–AD; Amendment 39–11871; AD 2000–16–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This AD requires either an inspection to detect damage or chafing of the insulation or wires, modification of the cable assembly, and repairs, if necessary; or replacement of the cable assembly of the lower anti-collision light with a new cable assembly. This amendment is prompted by reports of electrical arcing on structure near the lower body anti-collision light due to chafing of the cable. The actions specified by this AD are intended to prevent such chafing as a result of improper installation of the lower body anti-collision light assembly, which could result in electrical arcing or sparking in a flammable leakage zone of the airplane.

DATES: Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 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: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Boeing Model 767–200, -300, and -300F series airplanes was published in the **Federal Register** on February 2, 2000 (65 FR 4904). That action proposed to require either an inspection to detect damage or chafing of the insulation or wires, modification of the cable assembly, and repairs, if necessary; or replacement of the cable assembly of the lower anti-collision light with a new cable assembly.

Comments

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

Support for the Proposal

One commenter concurs with the proposed rule.

Request To Revise Secondary Reference

One commenter points out that ''NOTE 2'' of the proposed rule reads, ''Boeing Service Bulletin 767–33A0075, Revision 1, May 27, 1999, refers to Grimes Service Bulletin 60–3414–33-SB01, dated December 8, 1998, as an additional source of service information for accomplishment of the modification required by paragraph (a)(1) of this AD.'' The commenter notes that the original issue of Grimes Service Bulletin 60–3414–33-SB01 has been revised by issuance of Revision 1, dated February 17, 2000. The commenter requests that the FAA revise the proposed AD to reference Revision 1 of that service bulletin. The FAA concurs with the commenter's request, although the FAA notes that the correct date for Revision 1 of the Grimes service bulletin is March 13, 2000. The FAA has revised ''NOTE 2'' of this AD accordingly.

Request To Extend Compliance Time, Add Repetitive Inspections

One commenter requests that the compliance time for the modification or replacement of the cable assembly be extended from 1,800 flight hours to 16,000 flight hours or 3 years. The commenter concurs with the proposal to require the initial inspection and repair, if necessary, at 1,800 flight hours, and recommends repetitive inspections at intervals not to exceed 1,800 flight hours until accomplishment of the modification or replacement of the cable assembly. The commenter states that the proposed compliance time of 1,800 flight hours after the effective date of this AD does not provide ample time for the modification or replacement to be accomplished during a major maintenance visit. The commenter states that not accomplishing the modification or replacement at a regularly scheduled major maintenance visit will increase the cost of the proposed AD to operators. The commenter also asserts that its recommendation will ensure that the airplanes will continue to operate safely.

The FAA does not concur with the commenter's request. As noted in the proposed rule, the subject cable assembly is located under the center fuel tank—a flammable leakage zone. Modification or replacement of the cable assembly as required by this AD is necessary to prevent wire chafing, which could result in electrical arcing or sparking in this flammable leakage zone. Considering the critical nature of this unsafe condition, the FAA finds that 1,800 flight hours is an appropriate compliance time in which the affected airplanes can continue to operate before accomplishment of the requirements of this AD. The FAA notes that the compliance time of 1,800 flight hours is adequate for most affected operators to schedule accomplishment of this AD at the next maintenance visit after the effective date of this AD. 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 740 Model 767–200, –300, and –300F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 263 airplanes of U.S. registry will be affected by this AD.

In lieu of accomplishing the replacement, it will take approximately 3 work hours (1 work hour per airplane for the inspection and 2 work hours per airplane for the modification) to accomplish the inspection and modification according to this AD, at an average labor rate of $60 per work hour. Required parts will cost approximately $157 per airplane. Based on these figures, the cost impact of the inspection and modification that is one means of compliance with this AD is estimated to be $337 per airplane.

In lieu of accomplishing the inspection and modification, it will take approximately 3 work hours per airplane to accomplish the replacement according to this AD, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,552 (for Group 1 airplanes) or $2,234 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of the replacement that is one means of compliance with this AD is estimated to be $1,732 (for Group 1 airplanes) or $2,414 (for Group 2 airplanes) per airplane.

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

Regulatory Impact

The regulations adopted herein will not have 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 final rule does not have federalism implications under Executive Order 13132.

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:

2000–16–14 Boeing: Amendment 39–11871. Docket 99–NM–54–AD.

Applicability: Model 767–200, -300, -300F series airplanes; line numbers 1 through 739 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 chafing as a result of improper installation of the cable assembly of the lower body anti-collision light, which could result in electrical arcing or sparking in a flammable leakage zone of the airplane, accomplish the following:

Modification or Replacement

(a) Within 1,800 flight hours after the effective date of this AD, perform the actions in either paragraph (a)(1) or (a)(2) of this AD in accordance with Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999.

(1) Perform a one-time general visual inspection to detect damage or chafing of the insulation or wires, and modify the cable assembly of the lower body anti-collision cable assembly. If any damage or chafing is detected, prior to further flight, repair the damaged or chafed part.

Note 2: Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999, refers to Grimes Service Bulletin 60–3414–33-SB01, dated December 8, 1998, as an additional source of service information for accomplishment of the modification required by paragraph (a)(1) of this AD. Since the issuance of the Boeing service bulletin, Grimes has issued Service Bulletin 60–3414–33-SB01, Revision 1, dated March 13, 2000. Revision 1 of the Grimes service bulletin is an additional source of service information for accomplishment of the modification required by paragraph (a)(1) of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Replace the cable assembly of the lower body anti-collision cable assembly with a new cable assembly.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 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.

Effective Date

(e) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20963 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–52–AD; Amendment 39–11869; AD 2000–16–51]

RIN 2120–AA64

Airworthiness Directives; Wytwornia Sprzetu Model PZL–104 Wilga 80 Airplanes

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting emergency Airworthiness Directive (AD) 2000–16–51. The Federal Aviation Administration (FAA) previously sent emergency AD 2000–16–51 to all known U.S. owners and operators of Wytwornia Sprzetu Komunikacyjnego (PZL ''Warszawa-Okecie'') Model PZL–104 Wilga 80 airplanes. This AD requires you to repetitively replace the front tailplane to fuselage joint connector and bushing. This AD is the result of an incident report where the pin that fastens the tailplane to the fuselage fractured and separated on an airplane of similar design to that of the affected airplanes. The actions specified by this AD are intended to prevent failure of the front tailplane to fuselage joint connector, which could result in loss of control of the airplane if the tailplane and fuselage become disconnected during flight.

DATES: The AD becomes effective on August 21, 2000, to all affected persons who did not receive emergency AD 2000–16–51, issued August 2, 2000. Emergency AD 2000–16–51 contained the requirements of this amendment and became effective immediately upon receipt.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 21, 2000.

The FAA must receive any comments on this rule on or before September 8, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments and information related to this AD at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in this AD from Wytwornia Sprzetu Komunikacyjnego, PZL Warzawa-Okecie, AL. Krakowska 110/114, 00–973 Warsaw, Poland. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What has happened so far? The General Inspectorate of Civil Aviation (GICA), which is the airworthiness authority for Poland, recently advised FAA of an unsafe condition that could exist or develop on certain PZL ''Warszawa-Okecie'' Model PZL–104 Wilga 80 airplanes. The GICA reported that the pin that fastens the tailplane to the fuselage fractured and separated on a Model PZL–104 Wilga 35 airplane. The incident occurred during a ground run of the engine.

The Model PZL–104 Wilga 35 airplane is an earlier version of the Model PZL–104 Wilga 80 airplane. Type Certificate A55EU includes the Model PZL–104 Wilga 80 airplane. No U.S. type certificate covers the Model PZL–104 Wilga 35 airplanes.

The incident airplane incorporated the following parts:

- A PZL ''Warszawa-Okecie'' part number (P/N) CE360050 front tailplane to fuselage joint; and
- A PZL ''Warszawa-Okecie'' P/N CE360051 connector (pin) to the front tailplane to fuselage joint.

PZL ''Warszawa-Okecie'' issued Mandatory Service Bulletin No. 10400030, dated June 26, 2000. This service bulletin includes procedures for replacing the front tailplane to fuselage joint connector and bushing with the following:

- A PZL ''Warszawa-Okecie'' P/N CE360071 front tailplane to fuselage joint connector; and
- A PZL ''Warszawa-Okecie'' P/N CE360072 front tailplane to fuselage joint connector bushing.

The GICA classified this service bulletin as mandatory and issued Polish AD No. SP–0064–2000–A, dated June 27, 2000, in order to assure the continued airworthiness of these airplanes in Poland.

These airplane models are manufactured in Poland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the GICA has kept the FAA informed of the situation described above.

On August 2, FAA issued emergency AD 2000–16–51. This AD required that the actions and procedures in PZL ''Warszawa-Okecie'' Mandatory Service Bulletin No. 10400030, dated June 26, 2000, be incorporated on ''Warszawa-Okecie'' Model PZL–104 Wilga 80 airplanes, all serial numbers up to and including CF 21950963.

Why is it important to publish this AD? When issuing emergency AD 2000–16–51, we found that (1) immediate corrective action was required; (2) notice and opportunity for prior public comment were impracticable and contrary to the public interest; and (3) good cause existed to make the AD effective immediately by individual letters issued on August 2, 2000, to all known U.S. operators of PZL ''Warszawa-Okecie'' Model PZL–104 Wilga 80 airplanes, all serial numbers up to and including CF 21950963. These conditions still exist, and the AD is published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received.

Are there any specific portions of the AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.faa.gov/language/*.

How can I be sure the FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–52–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact relations between Federal and State governments? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. The FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this action involve an emergency situation? The FAA determined that this is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. This action involves an emergency regulation under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The FAA will prepare a final regulatory evaluation if we determine that this emergency regulation is significant under DOT Regulatory Policies and Procedures. You may obtain a copy of the evaluation (if required) from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–16–51 Wytwornia Sprzetu Komunikacyjnego (PZL ''Warszawa-Okecie''): Amendment 39–11869; Docket No. 2000-CE–52–AD.

(a) *What airplanes are affected by this AD?* This AD applies to any Model PZL–104 Wilga 80 airplane that:

(1) incorporates a serial number in the range of ''up to and including CF 21950963'';

(2) incorporates a PZL ''Warszawa-Okecie'' part number (P/N) CE360050 front tailplane to fuselage joint (or FAA-approved equivalent part number); and

(3) is certificated in any category.

(b) *When does this AD become effective?* This AD becomes effective August 21, 2000, to all affected persons who did not receive emergency AD 2000–16–51, issued August 2, 2000. Emergency AD 2000–16–51 contained the requirements of this amendment and became effective immediately upon receipt.

(c) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(d) *What problem does this AD address?* This AD is intended to prevent failure of the front tailplane to fuselage joint connector, which could result in loss of control of the airplane if the tailplane and fuselage become disconnected during flight.

(e) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	When	Procedures
(1) Replace the front tailplane to fuselage joint connector and bushing wit the following: (i) a PZL ''Warszawa-Okecie'' P/N CE360071 front tailplane to fuselage joint connector; and (ii) a PZL ''Warszawa-Okecie'' P/N CE360072 front tailplane to fuselage joint connector bushing	Prior to further flight after the effective date of this AD..	Accomplish this replacement in accordance with the procedures in PZL ''Warszawa-Okecie'' Mandatory Service Bulletin No. 10400030, dated June 26, 2000.
(2) Repetitively replace the parts specified in paragraph (e)(1)(i) and (e)(1)(ii) of this AD.	Within 650 hours time-in-service (TIS) after installing these parts and thereafter at intervals not to exceed 650 hours TIS.	Accomplish these replacements in accordance with the procedures in PZL ''Warszawa-Okecie'' Mandatory Service Bulletin No. 10400030, dated June 26, 2000.
(3) Do not install a PZL ''Warszawa-Okecie'' P/N CE360050 front tailplane to fuselage joint without accomplishing the repalcements in paragraph (e)(1) of this AD.	As of the effective date of this AD	Not applicable.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with PZL ''Warszawa-Okecie'' Mandatory Service Bulletin No. 10400030, dated June 26, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies of this document from Wytwornia Sprzetu Komunikacyjnego, PZL Warzawa-Okecie, AL. Krakowska 110/114, 00–973 Warsaw, Poland. You may look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Polish AD No. SP–0064–2000–A, dated June 27, 2000.

Issued in Kansas City, Missouri, on August 7, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20777 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–22]

Establishment of Class D Airspace; Boca Raton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description of a final rule that was published in the **Federal Register** on August 7, 2000, (65 FR 48146), Airspace Docket No. 00–ASO–22. The final rule establishes Class D airspace at Boca Raton, FL.

EFFECTIVE DATE: August 21, 2000.

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 00–19852, Airspace Docket No. 00–ASO–22, published on August 7, 2000, (65 FR 48146), established Class D airspace at Boca Raton, FL. The airspace description inadvertently omitted language excluding the Class D airspace area at Pompano Beach, FL. This action corrects the error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class D airspace area Boca Raton, FL, incorporated by reference at Sec. 71–1 and published in the **Federal Register** on August 7, 2000 (65 FR 48146), is corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO FL E5 Boca Raton, FL [Corrected]

On page 48147, column 2, line 4 of the airspace description, correct the airspace description by adding ''; excluding that airspace within the Pompano Beach, Class D airspace area.'' after ''Airport''.

* * * * *

Issued in College Park, Georgia, on August 10, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–21129 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–31]

Amendment of Class D Airspace; Cocoa Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a technical amendment to the Class D Airspace description at Cocoa Beach, FL. Since Patrick Approach Control has closed, St. Petersburg Automated Flight Service Station (AFSS) monitors the hours of operation for the Cape Canaveral Skid Strip.

EFFECTIVE DATE: 0901 UTC, November 30, 2000.

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

SUPPLEMENTARY INFORMATION:

History

The radar approach control facility at Patrick Air Force Base has been closed. This facility had the responsibility to monitor the hours of operation at the Cape Canaveral Skid Strip. The responsibility now resides with the St. Petersburg AFSS. Therefore, the Class D airspace at Cocoa Beach, FL, must be amended to reflect this change. This rule will become effective on the date specified in the **DATE** section. Since this action is technical in nature and has no impact on users of the airspace in the vicinity of the Cape Canaveral Skid Strip, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D airspace description at Cocoa Beach, FL, for the Cape Canaveral Skid Strip.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Cocoa Beach, FL [Revised]

Cape Canaveral Skid Strip, FL
(Lat. 28°28′03″N, long. 80°33′59″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.49-mile radius of the Cape Canaveral Skid Strip. This airspace lies within the confines of R–2932 and is effective on a random basis. The effective days and times are continuously available from St. Petersburg Automated Flight Service Station.

* * * * *

Issued in College Park, Georgia, on August 10, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–21128 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–27]

Removal of Class E Airspace; Melbourne, FL, and Cocoa Patrick AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E2 airspace at Melbourne, FL, and Cocoa Patrick AFB, FL. The weather and radio communications requirements for Class E2 Airspace at Melbourne International and Patrick AFB Airports, when the respective Air Traffic Control (ATC) towers close, no longer exist. Therefore, the Class E2 airspace for the Melbourne International and Patrick AFB Airports must be removed.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

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

SUPPLEMENTARY INFORMATION:

History

After Patrick AFB Radar Approach Control (RAPCON) was decommissioned, air traffic control responsibility for the Melbourne International and Patrick AFB Airports was transferred from Miami ARTC Center to Daytona Beach Approach Control, when the Melbourne and Patrick AFB (ATC) towers close. Daytona Beach Approach Control does not have the communications and weather capability to provide ATC service to the surface as required for Class E2 airspace. Therefore, the Class E2 airspace must be removed. This rule will become effective on the date specified in the ''DATE'' section. Since this action removes the Class E2 airspace, and as a result, eliminates the impact of Class E2 airspace on users of the airspace in the vicinity of the Melbourne International and Patrick

AFB Airports, notice and public procedure under 5 U.S.C. 553(b) are unncecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations 914 CFR part 71) removes Class E2 airspace at Melbourne, FL and Cocoa Patrick AFB, FL.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Melbourne, FL [Remove]

* * * * *

ASO FL E2 Cocoa Patrick AFB, FL [Remove]

* * * * *

Issued in College Park, GA, on July 18, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Division.

[FR Doc. 00–21201 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 2

Requests To Reopen

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The FTC is amending its Rule of Practice 2.51(b), which governs requests to reopen a Commission decision containing an order that has become effective. The amendment clarifies the ''satisfactory showing'' that a requester must make to support a request that the Commission reopen the proceeding to determine whether the order should be modified on public interest grounds.

DATES: This amendment is effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Ave., NW., Washington, DC 20580; 202–326–2447.

SUPPLEMENTARY INFORMATION: FTC Rule of Practice 2.51(b), 16 CFR 2.51(b), sets forth certain requirements for requests to reopen and modify Commission orders either because of ''changed conditions of law or fact'' or on the ground that ''the public interest so requires.'' As presently drafted, the Rule could be read to require that all requests be accompanied by affidavits ''demonstrating in detail the nature of the changed conditions,'' even if the request itself is based on the ''public interest.'' If there are no changed conditions, however, such a requirement is unnecessary.

Accordingly, the Commission is amending the second sentence of Rule 2.51(b) to make clear that changed conditions must be demonstrated only when the request alleges that changes in fact or law warrant reopening and modification.[1] In the case of ''public interest'' requests, the Rule continues to require that such a request be supported by a factual affidavit, as described in further detail below, explaining why the Commission should reopen and modify the order in the public interest. A showing of changed conditions would be permitted but not mandated.

The amendment does not alter the requirement in the first sentence of Rule 2.51(b) that a requester make a ''satisfactory showing'' of ''changed conditions of law or fact'' or the ''public interest'' in support of its request. While the FTC Act expressly requires a ''satisfactory showing'' of changed conditions of law or fact before the Commission is required to reopen an order on those grounds, the Act does not specify the threshold showing needed to reopen a Commission order on general ''public interest'' grounds. *See* FTC Act § 5(b), 15 U.S.C. 45(b). Nonetheless, when the Commission incorporated the ''satisfactory showing'' requirement of section 5(b) into Rule 2.51, the Commission extended the requirement to all requests filed under the Rule, including ''public interest'' requests.[2] In a subsequent letter ruling, the Commission, without referring to the existing language of the statute or the Rule, further stated that a request to reopen and modify an order in the ''public interest'' must make a threshold showing of ''affirmative need.''[3] Some have interpreted that showing of need as a narrow showing of the requester's need for relief from competitive burdens imposed by the order.[4]

[1] The amended sentence is redesignated as Rule 2.51(b)(1), and the remaining subsequent sentences of Rule 2.51(b), which are not amended, are redesignated as Rule 2.51(b)(2).

[2] *See* 45 FR 36338, 36339 (May 29, 1980) (amending Rule 2.51); *e.g., Glendinning Cos.*, 97 F.T.C. 163 (1981); *Coca-Cola Co.*, 97 F.T.C. 927 (1981); *National Dairy Prods. Ass'n*, 100 F.T.C. 431 (1982); *Hammermill Paper Co.*, 100 F.T.C. 454 (1982); *Morton Thiokol, Inc.*, 101 F.T.C. 353 (1983); Illinois Cent. Indus., Inc., 101 F.T.C. 409 (1983).

[3] *See* Letter to Joel Hoffman, *Damon Corp.*, Docket No. C–3916 (Mar. 29, 1983), *reprinted in* [1979–1983 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 22,207. In that letter, the Commission stated: ''As a threshold matter, [to reopen an order on public interest grounds] under [s]ection 5(b) and Commission Rule 2.51[,] a requester must demonstrate some affirmative need to modify the original order. Once such a showing of need has been made, the Commission will balance the reasons favoring the modification requested against any reasons not to make that modification.'' Letter at 2. The letter states that this approach was modeled on the two-step analysis used by courts in modifying final court orders, where a requester must present reasons that ''justify modification'' as a ''threshold matter.'' *Id.* at 2 n.1 (quoting *Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982)).

[4] *See, e.g.*, Concurring Statement of Comm'r Starek, *Columbia/HCA Healthcare Corp.*, 121 F.T.C. 611, 615 (1996); Concurring Statement of Comm'r Starek, *California & Hawaiian Sugar Co.*, 119 F.T.C. 39, 51–52 (1995); Dissenting Statement of Comm'r Azcuenaga, *Service Corp. Int'l*, 117 F.T.C. 700, 718 (1994). Nothing in the Commission's letter ruling in *Damon*, however, suggested or was intended to indicate that a showing of competitive injury is the *only* way to demonstrate ''affirmative need.''

Over time, however, the Commission has recognized that there can be threshold ''public interest'' reasons not necessarily related to the requester's competitive needs or interests to reopen an order for purposes of possibly modifying it. For example, in some cases, it may be in the ''public interest'' for the Commission to reopen an order if modifying it would likely achieve the intended purposes of an order more efficiently or effectively, and would not merely serve to lessen the burdens of the order on the requester.[5] Alternatively, there may be a threshold ''public interest'' reason to reopen and consider modifying an order if, in the absence of changed conditions, its purposes have nonetheless already been achieved, or are not likely to be achieved, under the existing order.[6] In still other cases, a showing of how non-parties to the order would benefit or avoid harm if the order were modified may provide a threshold ''public interest'' reason to reopen it.[7]

Accordingly, the Commission concludes that it is not necessary or appropriate to continue using the phrase ''affirmative need'' when discussing the threshold showing required for requests to reopen orders to consider whether they should be modified or set aside in the ''public interest.'' Instead, the Commission finds it sufficient to rely upon the language of Rule 2.51, which requires an initial ''satisfactory showing'' of how modification would serve the public interest before the Commission determines whether to reopen an order and consider all of the reasons for and against its modification. The term ''satisfactory showing,'' as opposed to ''affirmative need,'' better accommodates and acknowledges the range of threshold public interest considerations that the Commission may take into account under the ''public interest'' standard. In discontinuing reliance on the term ''affirmative need,'' the Commission hopes to dispel any lingering misconceptions or questions that may surround that particular formulation of the threshold requirement.

Thus, under the Rule, a ''satisfactory showing'' requires, with respect to ''public interest'' requests, that the requester make a *prima facie* showing of a legitimate ''public interest'' reason or reasons justifying relief. As explained earlier, this showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief.[8] In addition, this showing must be supported by evidence that is credible and reliable.[9]

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,[10] and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified.[11]

This Rule amendment is exempt from the notice-and-comment requirements of the Administrative Procedure Act as a rule of ''agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). The amendment does not entail an information collection for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 16 CFR Part 2

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, of the Code of Federal Regulations as follows:

PART 2—NON–ADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

Authority: 15 U.S.C. 46.

2. Amend § 2.51 by revising paragraph (b) to read as follows:

§ 2.51 Requests to reopen.

* * * * *

(b) *Contents.* A request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole

[5] *See, e.g., Promodes, S.A.*, 116 F.T.C. 377, 383 (1993) (affirmative need to reopen shown where proposed substitute divestiture would produce viable independent competitor, while existing divestiture provision, if enforced, would harm competition); *cf., e.g., Columbia/HCA*, 124 F.T.C. 38, 49 (1997) (concurring statement of Comm'r Starek, noting that a mutual mistake of fact underlying the order justified its reopening and modification); *American Med. Ass'n*, 114 F.T.C. 575, 580–81 (1991) (order reopened and modified to expand the reach of the order, further competition, and foster self-regulation); *Mattel, Inc.*, 104 F.T.C. 555, 557 (1984) (order reopened and modified to clarify order requirements); *Procter & Gamble Co.*, 103 F.T.C. 51, 53 (1984) (order reopened and modified to tailor disclosure requirements to their intended purpose).

[6] *See, e.g., Cooper Indus.*, 124 F.T.C. 602, 605–06 (1997) (affirmative need to reopen the order demonstrated by futility and cost of continuing to require that license be made available in absence of a likely buyer); *T&N plc*, 114 F.T.C. 696, 699 (1991) (affirmative need to reopen the order demonstrated by fact that goals of divestiture had been achieved and that requiring further divestitures would impede competition); *cf. Columbia/HCA*, 124 F.T.C. at 42 (order reopened and modified where divestiture requirement imposed costs unnecessary to achieve the order's remedial purposes); *Liquid Air Corp.*, 111 F.T.C. 135, 137 (1988) (order reopened and modified to delete prior approval provision that pertained to wholly internal corporate activities and served no procompetitive purpose); *Chevron Corp.*, 105 F.T.C. 228, 229 (1985) (order reopened and modified to delete hold separate agreement that had already accomplished its primary objective).

[7] *See, e.g., Institut Merieux, S.A.*, 117 F.T.C. 473, 481 (1994) (affirmative need to reopen order shown by costly leasing requirements that ''may adversely affect public health needs'' by delaying or preventing rabies vaccine from reaching the market); *cf. Schnuck Markets*, Docket No. C–3585 (June 2, 1998), slip op. at 3 (order reopened and modified to permit transfer of languishing assets to a charitable organization).

[8] Thus, a requester's mere assertion of competitive injury or disadvantage will ordinarily not constitute a ''satisfactory showing'' where the requester is unable to demonstrate how the proposed modification would promote effective competition or otherwise serve the broader public interest. *See, e.g., California & Hawaiian Sugar*, 119 F.T.C. at 44–45 (a requester cannot avoid order obligations just because its competitors are not so restricted; order was reopened and modified, however, to allow limited comparative claims that encouraged competition by enabling consumers to distinguish and choose among otherwise fungible products).

[9] As explained in a prior amendment to the Rule, ''[r]equests to reopen orders must not only allege facts that, if true, would constitute the necessary showing, but must also credibly demonstrate that the factual assertions are reliable. [The Rule] therefore specifically requires that requesters provide one or more affidavits to support facts alleged in requests to reopen and modify orders. This [requirement] will not only help the Commission in its decision making process but, by clarifying the applicable standard, aid requesters in presenting meritorious cases. * * * This [requirement] specifies the procedural method for substantiating factual assertions.'' 53 FR 40867 (Oct. 19, 1988).

[10] *See Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376–77 (9th Cir. 1992) (reopening and modification are independent determinations).

[11] The burden is a heavy one in view of the public interest in repose and finality of Commission orders. *See Service Corp. Int'l*, 117 F.T.C. at 702 (citing legislative history of section 5(b) regarding the showing required to reopen an order, and also citing *Federated Dep't Stores, Inc.* v. *Moitie*, 421 U.S. 394 (1981)); *RSR Corp.* v. *FTC*, 656 F.2d 718, 721 (D.C. Cir. 1981) (upholding denial of reopening request and noting that courts have consistently subscribed to the rule that agencies are not required to reopen except in the most ''extraordinary circumstances''). Maintaining the integrity of the Commission's orders is not merely a matter of the agency's administrative convenience: it also serves the public interest by ensuring that purchasing, marketing, and other competitive, strategic or consumer decisions can be made against a relatively stable and predictable background of applicable law and rules.

or in part, or that the public interest so requires.

(1) This requirement shall not be deemed satisfied if a request is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail:

(i) The nature of the changed conditions and the reasons why they require the requested modifications of the rule or order; or

(ii) The reasons why the public interest would be served by the modification.

(2) Each affidavit shall set forth facts that would be admissible in evidence and shall show that the affiant is competent to testify to the matters stated therein. All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–21185 Filed 8–18–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 125 and 225

[Docket No. RM99–8–000; Order No. 617]

Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies

Issued August 15, 2000.

AGENCY: Federal Energy Regulatory Commission

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of August 7, 2000, a final rule amending its records retention regulations for public utilities and licensees, natural gas companies, and oil pipeline companies (''regulated companies''). The Commission inadvertently omitted a cross reference in the schedule of records and periods of retention in Parts 125 and 225. The Commission also did not revise a record retention period in § 225.3 that it had agreed to do in the final rule's preamble language. This document corrects these omissions.

EFFECTIVE DATE: These corrections are effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Mary C. Lauermann, Office of Finance, Accounting and Operations, 888 First Street, N.E., Washington, DC 20426, (202) 208–0087.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission published a final rule in the **Federal Register** of August 7, 2000 (65 FR 48148). The following corrections are made to the final rule.

§ 125.3 [Corrected]

1. On pages 48157–48159 in § 125.3, in the second column of the table, add the phrase ''See § 125.2(g).'' after the years shown for the following item numbers: Item No. 8(b)(1); Item No. 10; Item No. 11(a), (b) and (d); Item No. 12(b); Item No. 13.1(c)(1) and (c)(2); Item No.16(a) and (b); Item No. 25(a)(1) and (b); and Item No. 27.

§ 225.3 [Corrected]

2. On pages 48162–48165 in § 225.3, in the second column of the table, add the phrase ''See § 225.2(g).'' after the years shown for the following item numbers: Item No. 8(b)(1); Item No. 10; Item No. 11(a), (b) and (d); Item No. 12(b); Item No. 16(a) and (b); Item No. 25(a)(1) and (b); and Item No. 27.

3. On page 48165, also in § 225.3, in the second column for Item No. 31, remove the words ''7 months.'' and add in their place the words ''1 year.''

David P. Boergers,

Secretary.

[FR Doc. 00–21147 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8897]

RIN 1545–AQ91

Rules for Property Produced in a Farming Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of section 263A of the Internal Revenue Code to property produced in the trade or business of farming. These regulations also provide guidance regarding the election available to certain taxpayers to not have section 263A apply to any plant produced by the electing taxpayers in each taxpayer's farming trade or business. These regulations affect taxpayers engaged in the trade or business of farming.

DATES: *Effective Date:* These regulations are effective August 21, 2000.

Applicability Date: For dates of applicability, see § 1.263A–4(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Grant D. Anderson, (202) 622–4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1987, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–208151–91) (52 FR 10118) by cross reference to temporary regulations published the same day (TD 8131, 52 FR 10052). Amendments to the notice of proposed rulemaking and temporary regulations were published in the **Federal Register** on August 7, 1987, by a notice of proposed rulemaking (52 FR 29391) that cross referenced to temporary regulations published the same day (TD 8148, 52 FR 29375). Notice 88–24 (1988–1 C.B. 491), provided that forthcoming regulations would modify the proposed regulations and the regulations under § 1.471–6. Notice 88–86 (1988–2 C.B. 401), provided that forthcoming regulations would clarify the definition of *members of family* for purposes of the election out of section 263A. In addition, Notice 88–86 provided that forthcoming regulations would provide that certain taxpayers could elect to use the simplified production method for property used in the trade or business of farming. On August 5, 1994, the temporary regulations relating to property produced in a farming business were reissued and published in the **Federal Register** (TD 8559, 59 FR 39958). On August 22, 1997, proposed and revised temporary regulations were issued and published in the **Federal Register** (TD 8729, 62 FR 44542). A public hearing was held on November 19, 1997.

Written comments responding to the notice of proposed rulemaking were received. After consideration of all the public comments, the regulations are adopted as revised by this Treasury decision and the corresponding temporary regulations are withdrawn.

Explanation of Provisions and Summary of Comments

Section 263A provides uniform capitalization rules that govern the treatment of costs incurred in the production of property or the acquisition of property for resale. Section 263A generally requires

taxpayers to capitalize the direct costs and an allocable portion of indirect costs of producing property in a farming business (including both plants and animals). However, taxpayers that are neither required to use an accrual method by section 447 nor prohibited by section 448(a)(3) from using the cash receipts and disbursements method (qualified taxpayers) are eligible for two exceptions provided in section 263A(d). First, under section 263A(d)(1), section 263A does not apply to a qualified taxpayer's cost of producing plants with a preproductive period of two years or less or animals in a farming business. Second, pursuant to section 263A(d)(3), a qualified taxpayer may elect to have section 263A not apply to the cost of producing plants in a farming business.

Property Produced in a Farming Business

Consistent with sections 263A(d)(1)(A) and 263A(d)(3)(A), the proposed regulations provided that the special rules of section 263A(d) apply only to property produced by a taxpayer in a farming business. The term *farming business* means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals.

The proposed regulations explained that taxpayers engaged in contract harvesting, reselling of plants or animals that are not produced by the taxpayer, and processing that is not incident to growing, raising, or harvesting of agricultural or horticultural commodities, are not producing property in a farming business. Several commentators requested that the final regulations permit some of these taxpayers to use the special rules of section 263A(d). However, sections 263A(d)(1)(A) and 263A(d)(3)(A) limit the special rules of section 263A(d) to property *produced* by the taxpayer in a farming business. As discussed below, the IRS and Treasury Department continue to believe that taxpayers that merely contract harvest, resell plants or animals that they do not raise or grow, or engage in processing agricultural or horticultural commodities that is not incident to growing, raising, or harvesting of these commodities, are not producing property in a farming business and therefore do not meet this requirement. Accordingly, the final regulations do not adopt these suggestions.

The proposed regulations provided that, for purposes of the definition of farming business, harvesting, does not include contract harvesting of an agricultural or horticultural commodity that is not grown or raised by the taxpayer. Some commentators were concerned that this language may be used to disqualify otherwise legitimate farmers who make arrangements with their neighbors to harvest each others crops. First, the IRS and Treasury Department believe that whether and to what extent a taxpayer is engaged in a farming business is to be determined based on all the facts and circumstances. No inference is intended that merely because a taxpayer engages in nonfarm activities, such as contract harvesting, in addition to farm activities, that such taxpayer is not engaged in a farming business. Further, the exception under section 263A(d) is relevant only to taxpayers whose costs are otherwise subject to capitalization under section 263A. Thus, for example, while taxpayers that grow plants are generally subject to section 263A with respect to that production activity, taxpayers that contract harvest horticultural commodities are not, because they are engaged in a service activity. A taxpayer that harvests crops grown by the taxpayer and contract harvests crops grown by another is subject to section 263A (and the exception contained in section 263A(d)), but only for the costs of harvesting its own crops. Accordingly, the final regulations do not adopt the commentators' suggestion to include contract harvesting in the special rules of section 263A(d).

Similarly, the proposed regulations provided that the special rules of section 263A(d) do not apply to a taxpayer that merely buys and resells plants or animals grown or raised by another taxpayer. The preamble to the proposed regulations indicated that in evaluating whether the taxpayer is engaged in the production, or merely the resale, of plants or animals, it is anticipated that consideration will be given to factors including: the length of time between the taxpayer's acquisition of a plant or animal and the time the plant or animal is made available for sale to the taxpayer's customers, and, in the case of plants, whether plants acquired by the taxpayer are planted in the ground or kept in temporary containers.

Many commentators expressed concern that the proposed regulations' concept of ''merely buying and reselling plants grown by another'' could be interpreted to mean that only taxpayers growing a plant from seed would be regarded as engaged in a farming business. For example, the commentators were concerned that a taxpayer that buys a partially grown plant, grows the plant to a larger size, and then sells the plant would not be engaged in a farming business. The final regulations clarify that a taxpayer is engaged in the production of property in a farming business, rather than the mere resale of plants or animals, if the plant or animal is held for further cultivation and development prior to sale. In addition, the final regulations include an example illustrating that a taxpayer that buys plants, grows them, and sells them, is producing property in a farming business; whereas a taxpayer that buys plants and, without further cultivation and development, resells them is not producing property in a farming business. The example also illustrates that a taxpayer engaged in both farming activities and resale activities is not required to capitalize costs under section 263A with respect to the resale activities if the taxpayer has average annual gross receipts of less than $10 million. See also, Ann. 97–120 (1997–50 I.R.B. 61 (Dec. 15, 1997)) (confirming that nursery growers using the farming exception may deduct the costs of young plants purchased for further development and cultivation prior to sale as well as the costs of growing the plants).

Some commentators suggested that the final regulations disregard whether a plant is kept in its container out of concern that taxpayers who grow plants in containers would not be considered to be producing property in a farming business. The IRS and Treasury Department continue to believe that this is a factor to be considered in addition to all the other facts and circumstances. Accordingly, the final regulations retain this factor. However, the final regulations have been clarified to explain that a plant that is *grown* by a taxpayer in a container is regarded as a plant produced in a farming business.

One commentator requested that the value added to a plant or animal by a taxpayer also be a factor in determining whether a taxpayer is engaged in the production, or the mere resale, of plants or animals. The final regulations provide that a taxpayer's addition of value to plants or animals through agricultural or horticultural processes is a factor to be considered in evaluating whether a taxpayer is producing property in a farming business.

Some commentators requested that the list of factors contained in the preamble be included in the regulations.

In response to these comments, the final regulations contain a list of factors, modified as discussed above, to assist in the determination of whether a plant or animal is held for further cultivation and development prior to sale or merely held for resale.

One commentator expressed concern that under the proposed regulations a farming business only includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural commodities. This commentator also suggested that farmers are engaging in processing activities as the result of new technology and changes in the market for agricultural or horticultural products. The IRS and Treasury Department believe that processing activities that are not normally incident to the growing, raising, or harvesting of agricultural or horticultural products, such as the canning of an agricultural product or the combination of an agricultural product with other ingredients to produce a different edible item, are not farming activities. Accordingly, the final regulations, like the proposed regulations, include in the definition of farming business only those processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products, such as the washing, inspecting, and packaging of those products.

Exceptions to Section 263A for Certain Property

Taxpayers generally must capitalize direct costs and an allocable portion of indirect costs of producing all plants (without regard to the length of the preproductive period) and animals. Qualified taxpayers, however, are eligible for an exception to this general rule. Under this exception, qualified taxpayers are not required to capitalize under section 263A the costs of producing plants that have a preproductive period of 2 years or less or with respect to animals. Thus, under this exception, qualified taxpayers are required to capitalize only those costs of producing plants that have a preproductive period in excess of 2 years.

A few commentators suggested that, for purposes of determining the application of section 263A, the preproductive period of a plant should be determined with reference to the length of time a particular taxpayer grows a plant rather than with reference to how long it takes the plant to reach a productive stage. The commentators suggested this method would, in essence, supplant the nationwide weighted average preproductive period used for plants grown in commercial quantities in the United States and the reasonable estimate of the preproductive period used for all other plants. For example, a qualified taxpayer grows bushes that have a preproductive period of 3 years and 3 months. If the taxpayer purchases and plants the bushes when they are 2 years old, the commentators suggest that the preproductive period of the bushes should be regarded as 2 years or less (and the taxpayer would, therefore, not be required to capitalize the costs associated with growing the bushes) because this taxpayer grows the bushes for only 15 months before the bushes become productive in marketable quantities. If, however, another qualified taxpayer purchased the same type of bushes when the bushes were 14 months old and grew them for 2 years and 1 month, the preproductive period of the bushes would be regarded as in excess of 2 years, and this taxpayer would be required to capitalize the costs of growing the bushes.

The final regulations do not adopt this recommendation. First, the statute requires that the preproductive period of a plant grown in commercial quantities in the United States be based on the nationwide weighted average preproductive period of the plant. *See Pelaez and Sons, Inc., et al.* v. *Commissioner*, 114 T.C. No. 28 (No. 18049–97 May 30, 2000). Further, the IRS and Treasury Department continue to believe that, for purposes of determining whether section 263A applies, the preproductive period of a plant not grown in commercial quantities in the United States also should be determined on a plant-by-plant basis rather than on a taxpayer-by-taxpayer basis.

In the case of a plant that is not produced in commercial quantities in the United States, the proposed regulations provided that, at or before the time the seed or plant is acquired or planted, the taxpayer is required to reasonably estimate whether the plant has a preproductive period in excess of 2 years. One commentator suggested that the regulations provide that if the United States Department of Agriculture (USDA) or a state department of agriculture certifies that a plant is not grown in commercial quantities in the United States, the plant will be deemed to have a preproductive period of 2 years or less. The effect of this suggestion would be to provide an exemption from section 263A for all qualified taxpayers growing plants that are not grown in commercial quantities in the United States. The IRS and Treasury Department believe that such a rule would be inconsistent with the statutory language of section 263A. Accordingly, the final regulations do not adopt this suggestion.

The proposed regulations provided that, for purposes of determining whether a plant has a preproductive period in excess of 2 years, in the case of a plant grown in commercial quantities in the United States, the nationwide weighted average preproductive period of such plant is used. One commentator requested that a list of plants with nationwide weighted average preproductive periods in excess of 2 years be published and kept current as needed. Notice 2000–45 (2000–36 I.R.B. (Sept. 5, 2000)) issued contemporaneously with the publication of these final regulations, provides a list of plants grown in commercial quantities in the United States that have a nationwide weighted average preproductive period in excess of 2 years. Notice 2000–45 will be modified and superseded as needed.

Tax shelters, within the meaning of section 448(a)(3), are not qualified taxpayers and are therefore not eligible for the special rules of section 263A(d). A tax shelter, for purposes of section 448(a)(3), means a farming business that is a farming syndicate as defined under section 464(c) or any partnership, entity, plan or arrangement that is a tax shelter within the meaning of section 6662(d)(2)(C)(iii) (that is, its principal purpose is to avoid or evade Federal income tax). See § 1.448–1T(b)(1)(iii). There is a presumption under section 448 that marketed arrangements, in which persons carry on farming activities using the services of a common managerial or administrative service, will fall within the meaning of a tax shelter if a substantial portion of farming expenses are prepaid with borrowed funds. See § 1.448–1T(b)(4). The proposed regulations repeated the text of § 1.448–1T(b)(1)(iii) and (4) to explain which farming businesses are tax shelters.

A commentator suggested that the marketed arrangement presumption set forth in § 1.448–1T(b)(4) and the proposed regulations is too broad in scope and should be modified. The commentator is concerned that this provision of the regulations will cause taxpayers participating in farming cooperatives to be treated as tax shelters and, therefore, require them to use an accrual method of accounting and to capitalize the direct costs and an allocable portion of indirect costs of producing all plants and animals. The commentator explained that such a result is unwarranted with respect to

individual farmers and farming businesses that join together to form farming cooperatives for non-tax reasons, such as to obtain supplies at lower prices and have a steady market for their farm products.

The IRS and Treasury Department believe that the marketed arrangement presumption is necessary to preclude taxpayers from investing in farming operations in order to generate losses, often without making economic outlays, that may be used to shelter income from other sources. However, the IRS and Treasury Department do not believe that the marketed arrangement presumption, as described in the temporary Income Tax Regulations under section 448 and the proposed section 263A regulations, would cause a taxpayer producing property in a farming business to be regarded as a tax shelter merely because the taxpayer joined a farming cooperative. Therefore, the marketed arrangement presumption is not modified in the final regulations.

Preparatory and Preproductive Period Costs

The IRS and Treasury Department believe that, in general, section 263A does not change the rules under section 263 regarding the need to capitalize preparatory costs (that is, costs incurred prior to raising agricultural or horticultural commodities or that otherwise enable a farmer to begin the farming process). Thus, the proposed regulations clarified that, as under prior law, taxpayers generally must capitalize preparatory expenditures (for example, the cost of seeds, seedlings, and animals; clearing, leveling and grading land; drilling and equipping wells; irrigation systems; budding trees, *etc.*). However, because section 263A requires the capitalization of certain additional costs, the amount of preparatory expenditures capitalized to property that is subject to section 263A may be greater than under prior law. By requiring the capitalization of all the direct costs and the allocable portion of indirect costs incurred during the preparatory period, section 263A ensures that the income from farming will be appropriately matched with all of the costs of producing property in a farming business.

Section 263A expanded the circumstances under which costs that were once termed *developmental expenditures* or *cultural practices expenditures* (that is, costs incurred by a taxpayer so that the growing process can continue in the desired manner) must be capitalized. The proposed regulations clarified that these costs are included in the category of preproductive period costs that are required to be capitalized under section 263A. Thus, the proposed regulations provided that all appropriate costs incurred during the preproductive period of property subject to section 263A must be capitalized, including the costs of certain soil and water conservation expenditures and fertilizing incurred during the preproductive period.

One commentator requested that expenditures for soil and water conservation, described in section 175, and fertilizer, described in section 180, be excepted from capitalization under section 263A. However, the legislative history of former section 447(b) indicates that Congress believed that soil and water conservation expenditures incurred during the preproductive period were required to be capitalized into the basis of the plants produced. See H.R. Rep. No. 658, 94th Cong., 1st Sess. 95 (1975), 1976–3 (Vol. 2) C.B. 787. See also, Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, H.R. Rep. No. 10612, 94th Cong., 2nd Sess. 55 (1976), 1976–3 (Vol. 2) C.B. 67. In addition, the legislative history to section 464 indicates that Congress believed that the costs of fertilizer incurred during the preproductive period was capitalized under former section 278. See Senate Report No. 938, 94th Cong., 2nd Sess. 62 (1976), 1976–3 (Vol. 3) C.B. 100. See also, Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, H.R. Rep. No. 10612, 94th Cong., 2nd Sess. 49 (1976), 1976–3 (Vol. 2) C.B. 61. Because section 263A was intended to continue the principles of sections 447 and 278, the IRS and Treasury Department believe that expenditures for soil and water conservation and fertilizer incurred during the preproductive period are costs of producing those plants. Further, the IRS and Treasury Department believe that providing a single rule regarding when expenditures for soil and water conservation and fertilizer incurred during the preproductive period must be capitalized is consistent with the intent of Congress to provide uniform capitalization rules. Accordingly, the final regulations retain the proposed regulations' provision that these costs incurred during the preproductive period are included in the category of costs that are required to be capitalized under section 263A. However, the IRS and Treasury Department do not believe that Congress intended to require capitalization of expenditures for soil and water conservation deductible under section 175 and fertilizer deductible under section 180 that are not incurred during the preproductive period. Accordingly, the final regulations clarify that these expenditures are not subject to capitalization under section 263A except to the extent they are required to be capitalized as a preproductive period cost.

Capitalization Period

Preproductive period costs (for example, irrigating, fertilizing, real estate taxes) are capitalized during the actual preproductive period of a plant or animal. A taxpayer that grows a plant that will have more than 1 crop or yield is engaged in the production of two types of property, the plant and the crop or yield of the plant (for example, the orange tree and the orange). The proposed regulations clarified the capitalization period for plants that will have more than 1 crop or yield, for crops or yields of plants that will have more than 1 crop or yield, and for other plants.

The proposed regulations provided that the preproductive period of a plant generally begins when a taxpayer first incurs costs with respect to the plant, for example, when the plant is acquired or the seed is planted. In the case of crops or yields of a plant that has more than 1 crop or yield, the preproductive period of the crop or yield begins when the plant has become productive in marketable quantities and the crop or yield first appears, whether in the form of a sprout, bloom, blossom, bud, *etc.*

One commentator suggested that the preproductive period for crops or yields that require several years of growth (for example, biennial crops) begins upon first appearance of the crop in the year the crop actually develops. For example, a biennial plant produces fruit buds in the first year, but the buds do not develop until the second year. In the second year, the plant produces blossoms, which subsequently grow into an edible food product that is harvested and sold in that year. However, if weather conditions are harsh, the buds produced in the first year may not blossom and develop in the second year. The commentator suggests that the preproductive period begin not when the buds first appear in the first year but when the blossoms appear in the second year as that is the first sign of actual development. The IRS and Treasury Department are concerned that the suggested rule would be difficult to apply because a taxpayer may not know in any case whether the appearance of a crop will actually develop.

Accordingly, the final regulations do not adopt this suggestion.

In the case of a plant that will have more than 1 crop or yield, the preproductive period of the plant ends when the plant becomes productive in marketable quantities. In the case of the crop or yield of a plant that has more than 1 crop or yield that has become productive in marketable quantities, the preproductive period of the crop or yield ends when the crop or yield is disposed of. Finally, in the case of other plants, the preproductive period ends when the plant is disposed of.

One commentator requested that the proper tax treatment of field costs (such as the costs of irrigating, fertilizing, *etc.*) that are incurred after a crop or yield is harvested but before the crop or yield is disposed of, which do not benefit and are unrelated to the crop or yield that has been harvested, be clarified. The commentator is concerned that the proposed regulations subject such field costs to capitalization under the general principles of section 263A. The IRS and Treasury Department agree with the commentator's concerns. Accordingly, the final regulations provide that field costs incurred after a crop or yield is harvested but before the crop or yield is disposed of do not have to be capitalized to the harvested crop or yield because such costs relate to the plant or a future crop or yield rather than to the harvested crop or yield.

One commentator requested that the definition of when a plant that will have more than 1 crop or yield becomes productive in marketable quantities be clarified. Under the proposed regulations such a plant becomes productive in marketable quantities when it is (or would be considered) placed in service for purposes of section 168 (without regard to the applicable convention). The commentator noted that some taxpayers regard a plant as being placed in service for purposes of depreciation at the time the preproductive period ends for purposes of section 263A. The commentator requested that the final regulations adopt a rule that provides more guidance with respect to the end of the preproductive period.

The IRS and Treasury Department agree with the commentator's concerns. Accordingly, the final regulations provide that a plant becomes productive in marketable quantities once a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course of the taxpayer's business. Factors that are relevant in determining whether the crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course include: whether a crop or yield is harvested that is more than *de minimis*, although it may be less than expected at the maximum bearing stage, based on a comparison of the quantities per acre harvested in the year in question to the quantities per acre expected to be harvested when the plant reaches full maturity; and whether the sales proceeds exceed the costs of harvest and make a reasonable contribution to an allocable share of farm expenses.

Election Not To Capitalize Costs

Qualified taxpayers may elect not to capitalize under section 263A the costs of producing certain plants even though such plants have a preproductive period in excess of 2 years and would otherwise be subject to the capitalization requirements of section 263A. Taxpayers making this election may continue to deduct (subject to other limitations of the Internal Revenue Code) the costs that were deductible under the rules in effect before the enactment of section 263A.

A taxpayer may make this election automatically on its original federal income tax return for the first taxable year in which the taxpayer would otherwise be required to capitalize costs under section 263A. The final regulations provide that if a taxpayer does not make this election in this first taxable year, the taxpayer may make this election by filing Form 3115, ''Application for Change in Accounting Method,'' using the appropriate procedures that govern the filing of the Form 3115.

A taxpayer and any person related to the taxpayer (including a member of the taxpayer's family) electing to not capitalize costs under section 263A for certain plants are required to use the alternative depreciation system of section 168(g)(2) for any property used predominantly in a farming business that is placed in service in a taxable year for which the election is in effect. In Notice 88–86, the IRS noted that commentators had suggested that guidance be provided clarifying the definition of members of a family. This guidance was provided in the proposed regulations. One commentator suggested that this proposed guidance be modified so that elections made by some family members do not bind other family members. The statutory language provides that an election affects family members and defines family members for this purpose. Thus, the IRS and Treasury Department believe that Congress's intent was to bind all family members when one member makes an election not to capitalize costs under section 263A. Accordingly, the final regulations do not adopt the suggestion.

Casualty Loss Exception

Section 263A(d)(2) provides an exception from capitalization under section 263A for costs incurred with respect to plants that are replacing certain plants that were lost by reason of certain casualties. The proposed regulations clarified that this exception does not apply to preparatory expenditures or the costs of capital assets. In addition, the regulations clarified that the casualty loss exception applies whether the plants are replanted on the same parcel of land as the plants destroyed by casualty or a parcel of land of the same acreage in the United States. The regulations additionally clarified that the exception applies to all plants replanted on such acreage, even if the plants are replanted in greater density than the plants destroyed by the casualty.

One commentator requested that the casualty loss exception be expanded to allow a current deduction for the expenditures incurred for replacing capital assets. The final regulations do not adopt this recommendation. Prior to the enactment of section 263A, preparatory expenditures as well as acquisition costs incurred during the preparatory period were generally capitalized under section 263. Also, prior to the enactment of section 263A, certain preproductive period costs were capitalized under former sections 447(b) and 278. Former section 278(c) provided an exception to the capitalization of preproductive period costs where such costs were incurred to replant a grove, orchard, or vineyard which had been lost or destroyed by reason of a casualty. However, this exception only applied to preproductive period costs capitalized under former section 278 and did not apply to preparatory expenditures and acquisition costs capitalized under section 263. The special exception in section 263A(d)(2) was intended to be a continuation, as modified to include all plants bearing an edible crop for human consumption, of the exception found in former section 278(c). Nothing in the statute or legislative history of section 263A indicates an intention to expand the exception to include other costs, such as the costs of replacing capital assets, in addition to the preproductive period costs.

Unit Livestock Price Method

The unit livestock price method provides for the valuation of different classes of animals in inventory at a standard unit price for each animal within a class. A taxpayer who elects to

use the unit livestock price method must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. In Notice 88–24, the IRS indicated that forthcoming regulations would modify the rule contained in § 1.471–6 and require that taxpayers adjust the unit prices upward, from time to time as specified by those regulations, to reflect increases in costs taxpayers experience in raising livestock. Contemporaneous with the section 263A proposed regulations published August 22, 1997, § 1.471–6 was modified to require a taxpayer to annually reevaluate the unit livestock prices and adjust the prices upward to reflect increases in the costs of raising livestock. Under this regulation, the consent of the Commissioner is not required to make such upward adjustments; however, consent is required to make any other change in animal classification or unit prices.

One commentator expressed concern that if taxpayers are required to annually reevaluate their unit prices, they should be able to both increase and decrease the unit price to reflect all changes in the cost of raising livestock. In addition, this commentator suggested that the unit livestock price method should be modified to allow a taxpayer to remove from inventory animals that have been raised for use in the taxpayer's trade or business (such as a breeding cow) and depreciate the inventory value of the animal.

Although these comments are outside the scope of this regulation, the IRS and Treasury Department understand the commentator's concerns. In addition, the IRS and Treasury Department recognize a broader concern that the requirement to annually reevaluate unit prices may have eliminated much of the simplicity of the unit livestock price method, especially for farmers neither required to use an accrual method by section 447 nor prohibited from using the cash method by section 448(a)(3). Accordingly, the IRS and Treasury Department intend to study the unit livestock price method to determine whether the method may be made simpler to apply and will take into account the commentator's suggestions as part of this study.

Record Keeping Requirements

Pursuant to 26 U.S.C. 7805(f)(1), copies of the 1997 notice of proposed rulemaking and temporary rule were provided to the Chief Counsel for Advocacy of the Small Business Administration for comment. The Chief Counsel for Advocacy submitted comments requesting that the IRS conduct a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) on how the notice of proposed rulemaking would affect recordkeeping burdens imposed on small business taxpayers engaged in a farming business.

Under the RFA, the IRS is required to prepare a regulatory flexibility analysis if the proposed rule imposes a collection of information requirement (including a recordkeeping requirement) on small entities and that requirement is likely to have a significant economic impact on a substantial number of small entities (5 U.S.C 603(a)). The RFA defines a *recordkeeping requirement* as a ''requirement imposed by an agency on persons to maintain specified records'' (5 U.S.C. 601(7) and (8)). Since neither the proposed nor final regulation contain a collection of information requirement (including a requirement that persons maintain specified records), an analysis is not required by the RFA.

Effective Date and Method Changes

The final regulations provide that, in the case of property that is not inventory in the hands of the taxpayer, the regulations are applicable to costs incurred after August 21, 2000 in taxable years ending after such date. In the case of inventory property, the final regulations are applicable to taxable years beginning after August 21, 2000.

For property that is not inventory, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of these final regulations for costs incurred after August 21, 2000, provided the change is made for the first taxable year ending after August 21, 2000. For inventory property, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of these final regulations for the first taxable year beginning after August 21, 2000. To make such a change, a taxpayer must follow the automatic consent procedures in Rev. Proc. 99–49 (1999–2 I.R.B. 725) (see § 601.601(d)(2) of this chapter), as modified by these regulations.

Effect on Other Documents

The following publications are obsolete as of August 22, 2000: Notice 87–76 (1987–2 C.B. 384); Notice 88–24 (1988–1 C.B. 491); and section V of Notice 88–86 (1988–2 C.B. 401).

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final regulations are Jan Skelton and Richard C. Farley, Jr. previously of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.162–12 is amended by revising the ninth sentence of paragraph (a) to read as follows:

§ 1.162–12 Expenses for farmers.

(a) * * * For rules regarding the capitalization of expenses of producing property in the trade or business of farming, see section 263A of the Internal Revenue Code and § 1.263A–4. * * *

* * * * *

Par. 3. Section 1.263A–0 is amended by revising the introductory text and adding entries for § 1.263A–4 to read as follows:

§ 1.263A–0 Outline of regulations under section 263A.

This section lists the paragraphs in §§ 1.263A–1 through 1.263A–4 and §§ 1.263A–7 through 1.263A–15 as follows:

* * * * *

§ 1.263A–4 Rules for property produced in a farming business.

(a) Introduction.

(1) In general.
(2) Exception.
(i) In general.
(ii) Tax shelter.
(A) In general.
(B) Presumption.
(iii) Examples.
(3) Costs required to be capitalized or inventoried under another provision.
(4) Farming business.
(i) In general.
(A) Plant.
(B) Animal.
(ii) Incidental activities.
(A) In general.
(B) Activities that are not incidental.
(iii) Examples.
(b) Application of section 263A to property produced in a farming business.
(1) In general.
(i) Plants.
(ii) Animals.
(2) Preproductive period.
(i) Plant.
(A) In general.
(B) Applicability of section 263A.
(C) Actual preproductive period.
(*1*) Beginning of the preproductive period.
(*2*) End of the preproductive period.
(*i*) In general.
(*ii*) Marketable quantities.
(D) Examples.
(ii) Animal.
(A) Beginning of the preproductive period.
(B) End of the preproductive period.
(C) Allocation of costs between animal and first yield.
(c) Inventory methods.
(1) In general.
(2) Available for property used in a trade or business.
(3) Exclusion of property to which section 263A does not apply.
(d) Election not to have section 263A apply.
(1) Introduction.
(2) Availability of the election.
(3) Time and manner of making the election.
(i) Automatic election.
(ii) Nonautomatic election.
(4) Special rules.
(i) Section 1245 treatment.
(ii) Required use of alternative depreciation system.
(iii) Related person.
(A) In general.
(B) Members of family.
(5) Examples.
(e) Exception for certain costs resulting from casualty losses.
(1) In general.
(2) Ownership.
(3) Examples.
(4) Special rule for citrus and almond groves.
(i) In general.
(ii) Example.
(f) Effective date and change in method of accounting.
(1) Effective date.
(2) Change in method of accounting.

* * * * *

§ 1.263A–0T [Removed]

Par. 4. Section 1.263A–0T is removed.

Par. 5. Section 1.263A–1 is amended as follows:

1. The last sentence of paragraph (b)(3) is revised.

2. The last sentence of paragraph (b)(4) is revised.

The revisions read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(b) * * *

(3) * * * See § 1.263A–4 for specific rules relating to taxpayers engaged in the trade or business of farming.

(4) * * * See § 1.263A–4, however, for rules relating to taxpayers producing certain trees to which section 263A applies.

* * * * *

Par. 6. Section 1.263A–4 is revised to read as follows:

§ 1.263A–4 Rules for property produced in a farming business.

(a) *Introduction*—(1) *In general.* This section provides guidance with respect to the application of section 263A to property produced in a farming business as defined in paragraph (a)(4) of this section. Except as otherwise provided by the rules of this section, the general rules of §§ 1.263A–1 through 1.263A–3 and §§ 1.263A–7 through 1.263A–15 apply to property produced in a farming business. A taxpayer that engages in the raising or growing of any agricultural or horticultural commodity, including both plants and animals, is engaged in the production of property. Section 263A generally requires the capitalization of the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of this property. The direct and indirect costs of producing plants or animals generally include preparatory costs allocable to the plant or animal and preproductive period costs of the plant or animal. Except as provided in paragraphs (a)(2) and (e) of this section, taxpayers must capitalize the costs of producing all plants and animals unless the election described in paragraph (d) of this section is made.

(2) *Exception*—(i) *In general.* Section 263A does not apply to the costs of producing plants with a preproductive period of 2 years or less or the costs of producing animals in a farming business, if the taxpayer is not—

(A) A corporation or partnership required to use an accrual method of accounting (accrual method) under section 447 in computing its taxable income from farming; or

(B) A tax shelter prohibited from using the cash receipts and disbursements method under section 448(a)(3).

(ii) *Tax shelter*—(A) *In general.* A farming business is considered a tax shelter, and thus a taxpayer prohibited from using the cash method under section 448(a)(3), if the farming business is—

(*1*) A farming syndicate as defined in section 464(c); or

(*2*) A tax shelter, within the meaning of section 6662(d)(2)(C)(iii).

(B) *Presumption.* Marketed arrangements in which persons carry on farming activities using the services of a common managerial or administrative service will be presumed to have the principal purpose of tax avoidance, within the meaning of section 6662(d)(2)(C)(iii), if such persons prepay a substantial portion of their farming expenses with borrowed funds.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (a)(2):

Example 1. Farmer A grows trees that have a preproductive period in excess of 2 years, and that produce an annual crop. Farmer A is not required by section 447 to use an accrual method or prohibited by section 448(a)(3) from using the cash method. Accordingly, Farmer A qualifies for the exception described in this paragraph (a)(2). Since the trees have a preproductive period in excess of 2 years, Farmer A must capitalize the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of the trees. Since the annual crop has a preproductive period of 2 years or less, Farmer A is not required to capitalize the costs of producing the crops.

Example 2. Assume the same facts as *Example 1*, except that Farmer A is required by section 447 to use an accrual method or prohibited by 448(a)(3) from using the cash method. Farmer A does not qualify for the exception described in this paragraph (a)(2). Farmer A is required to capitalize the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of the trees and crops.

(3) *Costs required to be capitalized or inventoried under another provision.* The exceptions from capitalization provided in paragraphs (a)(2), (d) and (e) of this section do not apply to any cost that is required to be capitalized or inventoried under another Internal Revenue Code or regulatory provision, such as section 263 or 471.

(4) *Farming business*—(i) *In general.* A farming business means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. For purposes of this section, the term harvesting does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another. Similarly, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A taxpayer is engaged in raising a plant or animal, rather than the mere resale of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by the taxpayer to the plant or animal through agricultural or horticultural processes; the length of time between the taxpayer's acquisition of the plant or animal and the time that the taxpayer makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

(A) *Plant.* A plant produced in a farming business includes, but is not limited to, a fruit, nut, or other crop bearing tree, an ornamental tree, a vine, a bush, sod, and the crop or yield of a plant that will have more than one crop or yield raised by the taxpayer. Sea plants are produced in a farming business if they are tended and cultivated as opposed to merely harvested.

(B) *Animal.* An animal produced in a farming business includes, but is not limited to, any stock, poultry or other bird, and fish or other sea life raised by the taxpayer. Thus, for example, the term animal may include a cow, chicken, emu, or salmon raised by the taxpayer. Fish and other sea life are produced in a farming business if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(ii) *Incidental activities*—(A) *In general.* A farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products. For example, a taxpayer in the trade or business of growing fruits and vegetables may harvest, wash, inspect, and package the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the trade or business of farming with respect to the growing of fruits and vegetables and the processing activities incident to their harvest.

(B) *Activities that are not incidental.* Farming business does not include the processing of commodities or products beyond those activities that are normally incident to the growing, raising, or harvesting of such products.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (a)(4):

Example 1. Individual A operates a retail nursery. Individual A has three categories of plants. The first category is comprised of plants that Individual A grows from seeds or cuttings. The second category is comprised of plants that Individual A purchases in containers and grows for a period of from several months to several years. Individual A replants some of these plants in the ground. The others are replanted in a series of larger containers as they grow. The third category is comprised of plants that are purchased by Individual A in containers. Individual A does not grow these plants to a larger size before making them available for resale. Instead, Individual A makes these plants available for resale, in the container in which purchased, shortly after receiving them. Thus, no value is added to these plants by Individual A through horticultural processes. Individual A also sells soil, mulch, chemicals, and yard tools. Individual A is producing property in the farming business with respect to the first two categories of plants because these plants are held for further cultivation and development prior to sale. The plants in the third category are not held for further cultivation and development prior to sale and, therefore, are not regarded as property produced in a farming business for purposes of section 263A. Accordingly, Individual A must account for the third category of plants, along with the soil, mulch, chemicals, and yard tools, as property acquired for resale. If Individual A's average annual gross receipts are less than $10 million, Individual A will not be required to capitalize costs with respect to its resale activities under section 263A.

Example 2. Individual B is in the business of growing and harvesting wheat and other grains. Individual B also processes grain that Individual B has harvested in order to produce breads, cereals, and other similar food products, which Individual B then sells to customers in the course of its business. Although Individual B is in the farming business with respect to the growing and harvesting of grain, Individual B is not in the farming business with respect to the processing of such grain to produce the food products.

Example 3. Individual C is in the business of raising poultry and other livestock. Individual C also operates a meat processing operation in which the poultry and other livestock are slaughtered, processed, and packaged or canned. The packaged or canned meat is sold to Individual C's customers. Although Individual C is in the farming business with respect to the raising of poultry and other livestock, Individual C is not in the farming business with respect to the slaughtering, processing, packaging, and canning of such animals to produce the food products.

(b) *Application of section 263A to property produced in a farming business*—(1) *In general.* Unless otherwise provided in this section, section 263A requires the capitalization of the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of any property in a farming business (including animals and plants without regard to the length of their preproductive period). Section 1.263A–1(e) describes the types of direct and indirect costs that generally must be capitalized by taxpayers under section 263A and paragraphs (b)(1)(i) and (ii) of this section provide specific examples of the types of costs typically incurred in the trade or business of farming. For purposes of this section, soil and water conservation expenditures that a taxpayer has elected to deduct under section 175 and fertilizer that a taxpayer has elected to deduct under section 180 are not subject to capitalization under section 263A, except to the extent these costs are required to be capitalized as a preproductive period cost of a plant or animal.

(i) *Plants.* The costs of producing a plant typically required to be capitalized under section 263A include the costs incurred so that the plant's growing process may begin (preparatory costs), such as the acquisition costs of the seed, seedling, or plant, and the costs of planting, cultivating, maintaining, or developing the plant during the preproductive period (preproductive period costs). Preproductive period costs include, but are not limited to, management, irrigation, pruning, soil and water conservation (including costs that the taxpayer has elected to deduct under section 175), fertilizing (including costs that the taxpayer has elected to deduct under section 180), frost protection, spraying, harvesting, storage and handling, upkeep, electricity, tax depreciation and repairs on buildings

and equipment used in raising the plants, farm overhead, taxes (except state and Federal income taxes), and interest required to be capitalized under section 263A(f).

(ii) *Animals.* The costs of producing an animal typically required to be capitalized under section 263A include the costs incurred so that the animal's raising process may begin (preparatory costs), such as the acquisition costs of the animal, and the costs of raising or caring for such animal during the preproductive period (preproductive period costs). Preproductive period costs include, but are not limited to, management, feed (such as grain, silage, concentrates, supplements, haylage, hay, pasture and other forages), maintaining pasture or pen areas (including costs that the taxpayer has elected to deduct under sections 175 or 180), breeding, artificial insemination, veterinary services and medicine, livestock hauling, bedding, fuel, electricity, hired labor, tax depreciation and repairs on buildings and equipment used in raising the animals (for example, barns, trucks, and trailers), farm overhead, taxes (except state and Federal income taxes), and interest required to be capitalized under section 263A(f).

(2) *Preproductive period*—(i) *Plant*—(A) *In general.* The preproductive period of property produced in a farming business means—

(*1*) In the case of a plant that will have more than one crop or yield (for example, an orange tree), the period before the first marketable crop or yield from such plant;

(*2*) In the case of the crop or yield of a plant that will have more than one crop or yield (for example, the orange), the period before such crop or yield is disposed of; or

(*3*) In the case of any other plant, the period before such plant is disposed of.

(B) *Applicability of section 263A.* For purposes of determining whether a plant has a preproductive period in excess of 2 years, the preproductive period of plants grown in commercial quantities in the United States is based on the nationwide weighted average preproductive period for such plant. The Commissioner will publish a noninclusive list of plants with a nationwide weighted average preproductive period in excess of 2 years. In the case of other plants grown in commercial quantities in the United States, the nationwide weighted average preproductive period must be determined based on available statistical data. For all other plants, the taxpayer is required, at or before the time the seed or plant is acquired or planted, to reasonably estimate the preproductive period of the plant. If the taxpayer estimates a preproductive period in excess of 2 years, the taxpayer must capitalize the costs of producing the plant. If the estimate is reasonable, based on the facts in existence at the time it is made, the determination of whether section 263A applies is not modified at a later time even if the actual length of the preproductive period differs from the estimate. The actual length of the preproductive period will, however, be considered in evaluating the reasonableness of the taxpayer's future estimates. The nationwide weighted average preproductive period or the estimated preproductive period is only used for purposes of determining whether the preproductive period of a plant is greater than 2 years.

(C) *Actual preproductive period.* The plant's actual preproductive period is used for purposes of determining the period during which a taxpayer must capitalize preproductive period costs with respect to a particular plant.

(*1*) *Beginning of the preproductive period.* The actual preproductive period of a plant begins when the taxpayer first incurs costs that directly benefit or are incurred by reason of the plant. Generally, this occurs when the taxpayer plants the seed or plant. In the case of a taxpayer that acquires plants that have already been permanently planted, or plants that are tended by the taxpayer or another prior to permanent planting, the actual preproductive period of the plant begins upon acquisition of the plant by the taxpayer. In the case of the crop or yield of a plant that will have more than one crop or yield, the actual preproductive period begins when the plant has become productive in marketable quantities and the crop or yield first appears, for example, in the form of a sprout, bloom, blossom, or bud.

(*2*) *End of the preproductive period*—(i) *In general.* In the case of a plant that will have more than one crop or yield, the actual preproductive period ends when the plant first becomes productive in marketable quantities. In the case of any other plant (including the crop or yield of a plant that will have more than one crop or yield), the actual preproductive period ends when the plant, crop, or yield is sold or otherwise disposed of. Field costs, such as irrigating, fertilizing, spraying and pruning, that are incurred after the harvest of a crop or yield but before the crop or yield is sold or otherwise disposed of are not required to be included in the preproductive period costs of the harvested crop or yield because they do not benefit and are unrelated to the harvested crop or yield.

(ii) *Marketable quantities.* A plant that will have more than one crop or yield becomes productive in marketable quantities once a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course of the taxpayer's business. Factors that are relevant to determining whether a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course include: whether the crop or yield is harvested that is more than *de minimis*, although it may be less than expected at the maximum bearing stage, based on a comparison of the quantities per acre harvested in the year in question to the quantities per acre expected to be harvested when the plant reaches full maturity; and whether the sales proceeds exceed the costs of harvest and make a reasonable contribution to an allocable share of farm expenses.

(D) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2):

Example 1. (i) Farmer A, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer A acquires 1 year-old plants by purchasing them from an unrelated party, Corporation B, and plants them immediately. The nationwide weighted average preproductive period of the plant is 4 years. The particular plants grown by Farmer A do not begin to produce in marketable quantities until 3 years and 6 months after they are planted by Farmer A.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer A is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer A must begin to capitalize the preproductive period costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer A must continue to capitalize preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer A must capitalize the preproductive period costs for a period of 3 years and 6 months (that is, until the plants are 4 years and 6 months old), notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 4 years.

Example 2. (i) Farmer B, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. The nationwide weighted average preproductive period of the plant is 2 years and 5 months. Farmer B acquires 1 month-old plants by purchasing them from an unrelated party, Corporation B. Farmer B enters into a contract with Corporation B

under which Corporation B will retain and tend the plants for 7 months following the sale. At the end of 7 months, Farmer B takes possession of the plants and plants them in the permanent orchard. The plants become productive in marketable quantities 1 year and 11 months after they are planted by Farmer B.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize the preproductive period costs when the purchase occurs. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize the preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 2 years and 6 months (the 7 months the plants are tended by Corporation B and the 1 year and 11 months after the plants are planted by Farmer B), that is, until the plants are 2 years and 7 months old, notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 2 years and 5 months.

Example 3. (i) Assume the same facts as in *Example 2*, except that Farmer B acquires the plants by purchasing them from Corporation B when the plants are 8 months old and that the plants are planted by Farmer B upon acquisition.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize the preproductive period costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize the preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 1 year and 11 months.

Example 4. (i) Farmer C, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer C acquires 1 month-old plants from an unrelated party and plants them immediately. The nationwide weighted average preproductive period of the plant is 2 years and 3 months. The particular plants grown by Farmer C begin to produce in marketable quantities 1 year and 10 months after they are planted by Farmer C.

(ii) Since the plants are deemed to have a nationwide weighted average preproductive period in excess of 2 years, Farmer C is required to capitalize the costs of producing the plants, notwithstanding the fact that the particular plants grown by Farmer C become productive in less than 2 years. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer C must begin to capitalize the preproductive period costs when it plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer C properly ceases capitalization of preproductive period costs when the plants become productive in marketable quantities (that is, 1 year and 10 months after they are planted, which is when they are 1 year and 11 months old).

Example 5. (i) Farmer D, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are not grown in commercial quantities in the United States. Farmer D acquires and plants the plants when they are 1 year old and estimates that they will become productive in marketable quantities 3 years after planting. Thus, at the time the plants are acquired and planted Farmer D reasonably estimates that the plants will have a preproductive period of 4 years. The actual plants grown by Farmer D do not begin to produce in marketable quantities until 3 years and 6 months after they are planted by Farmer D.

(ii) Since the plants have an estimated preproductive period in excess of 2 years, Farmer D is required to capitalize the costs of producing the plants. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer D must begin to capitalize the preproductive period costs when it acquires and plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer D must continue to capitalize the preproductive period costs until the plants begin to produce in marketable quantities. Thus, Farmer D must capitalize the preproductive period costs of the plants for a period of 3 years and 6 months (that is, until the plants are 4 years and 6 months old), notwithstanding the fact that Farmer D estimated that the plants would become productive after 4 years.

Example 6. (i) Farmer E, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section grows plants from seed. The plants are not grown in commercial quantities in the United States. The plants do not have more than 1 crop or yield. At the time the seeds are planted Farmer E reasonably estimates that the plants will have a preproductive period of 1 year and 10 months. The actual plants grown by Farmer E are not ready for harvesting and disposal until 2 years and 2 months after the seeds are planted by Farmer E.

(ii) Because Farmer E's estimate of the preproductive period (which was 2 years or less) was reasonable at the time made based on the facts, Farmer E will not be required to capitalize the costs of producing the plants under section 263A, notwithstanding the fact that the actual preproductive period of the plants exceeded 2 years. See paragraph (b)(2)(i)(B) of this section. However, Farmer E must take the actual preproductive period of the plants into consideration when making future estimates of the preproductive period of such plants.

Example 7. (i) Farmer F, a calendar year taxpayer that does not qualify for the exception in paragraph (a)(2) of this section, grows trees that will have more than one crop. Farmer F acquires and plants the trees in April, Year 1. On October 1, Year 6, the trees become productive in marketable quantities.

(ii) The costs of producing the plant, including the preproductive period costs incurred by Farmer F on or before October 1, Year 6, are capitalized to the trees. Preproductive period costs incurred after October 1, Year 6, are capitalized to a crop when incurred during the preproductive period of the crop and deducted as a cost of maintaining the tree when incurred between the disposal of one crop and the appearance of the next crop. See paragraphs (b)(2)(i)(A), (b)(2)(i)(C)(*1*) and (b)(2)(i)(C)(*2*) of this section.

Example 8. (i) Farmer G, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, produces fig trees on 10 acres of land. The fig trees are grown in commercial quantities in the United States and have a nationwide weighted average preproductive period in excess of 2 years. Farmer G acquires and plants the fig trees in their permanent grove during Year 1. When the fig trees are mature, Farmer G expects to harvest 10x tons of figs per acre. At the end of Year 4, Farmer G harvests .5x tons of figs per acre that it sells for $100x. During Year 4, Farmer G incurs expenses related to the fig operation of: $50x to harvest the figs and transport them to market and other direct and indirect costs related to the fig operation in the amount of $1000x.

(ii) Since the fig trees have a preproductive period in excess of 2 years, Farmer G is required to capitalize the costs of producing the fig trees. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer G must continue to capitalize preproductive period costs to the trees until they become productive in marketable quantities. The following factors weigh in favor of a determination that the fig trees did not become productive in Year 4: the quantity of harvested figs is *de minimis* based on the fact that the yield is only 5 percent of the expected yield at maturity and the proceeds from the sale of the figs are sufficient, after covering the costs of harvesting and transporting the figs, to cover only a negligible portion of the allocable farm expenses. Based on these facts and circumstances, the fig trees did not become productive in marketable quantities in Year 4.

(ii) *Animal.* An animal's actual preproductive period is used to determine the period that the taxpayer must capitalize preproductive period costs with respect to a particular animal.

(A) *Beginning of the preproductive period.* The preproductive period of an animal begins at the time of acquisition, breeding, or embryo implantation.

(B) *End of the preproductive period.* In the case of an animal that will be used in the trade or business of farming (for example, a dairy cow), the preproductive period generally ends when the animal is (or would be considered) placed in service for

purposes of section 168 (without regard to the applicable convention). However, in the case of an animal that will have more than one yield (for example, a breeding cow), the preproductive period ends when the animal produces (for example, gives birth to) its first yield. In the case of any other animal, the preproductive period ends when the animal is sold or otherwise disposed of.

(C) *Allocation of costs between animal and yields.* In the case of an animal that will have more than one yield, the costs incurred after the beginning of the preproductive period of the first yield but before the end of the preproductive period of the animal must be allocated between the animal and the yield using any reasonable method. Any depreciation allowance on the animal may be allocated entirely to the yield. Costs incurred after the beginning of the preproductive period of the second yield, but before the first yield is weaned from the animal must be allocated between the first and second yield using any reasonable method. However, a taxpayer may elect to allocate these costs entirely to the second yield. An allocation method used by a taxpayer is a method of accounting that must be used consistently and is subject to the rules of section 446 and the regulations thereunder.

(c) *Inventory methods*—(1) *In general.* Except as otherwise provided, the costs required to be allocated to any plant or animal under this section may be determined using reasonable inventory valuation methods such as the farm-price method or the unit-livestock-price method. See § 1.471–6. Under the unit-livestock-price method, unit prices must include all costs required to be capitalized under section 263A. A taxpayer using the unit-livestock-price method may elect to use the cost allocation methods in § 1.263A–1(f) or 1.263A–2(b) to allocate its direct and indirect costs to the property produced in the business of farming. In such a situation, section 471 costs are the costs taken into account by the taxpayer under the unit-livestock-price method using the taxpayer's standard unit price as modified by this paragraph (c)(1). Tax shelters, as defined in paragraph (a)(2)(ii) of this section, that use the unit-livestock-price method for inventories must include in inventory the annual standard unit price for all animals that are acquired during the taxable year, regardless of whether the purchases are made during the last 6 months of the taxable year. Taxpayers required by section 447 to use an accrual method or prohibited by section 448(a)(3) from using the cash method that use the unit-livestock-price method must modify the annual standard price in order to reasonably reflect the particular period in the taxable year in which purchases of livestock are made, if such modification is necessary in order to avoid significant distortions in income that would otherwise occur through operation of the unit-livestock-price method.

(2) *Available for property used in a trade or business.* The farm-price method or the unit-livestock-price method may be used by any taxpayer to allocate costs to any plant or animal under this section, regardless of whether the plant or animal is held or treated as inventory property by the taxpayer. Thus, for example, a taxpayer may use the unit-livestock-price method to account for the costs of raising livestock that will be used in the trade or business of farming (for example, a breeding animal or a dairy cow) even though the property in question is not inventory property.

(3) *Exclusion of property to which section 263A does not apply.* Notwithstanding a taxpayer's use of the farm-price method with respect to farm property to which the provisions of section 263A apply, that taxpayer is not required, solely by such use, to use the farm-price method with respect to farm property to which the provisions of section 263A do not apply. Thus, for example, assume Farmer A raises fruit trees that have a preproductive period in excess of 2 years and to which the provisions of section 263A, therefore, apply. Assume also that Farmer A raises cattle and is not required to use an accrual method by section 447 or prohibited from using the cash method by section 448(a)(3). Because Farmer A qualifies for the exception in paragraph (a)(2) of this section, Farmer A is not required to capitalize the costs of raising the cattle. Although Farmer A may use the farm-price method with respect to the fruit trees, Farmer A is not required to use the farm-price method with respect to the cattle. Instead, Farmer A's accounting for the cattle is determined under other provisions of the Code and regulations.

(d) *Election not to have section 263A apply*—(1) *Introduction.* This paragraph (d) permits certain taxpayers to make an election not to have the rules of this section apply to any plant produced in a farming business conducted by the electing taxpayer. The election is a method of accounting under section 446, and once an election is made, it is revocable only with the consent of the Commissioner.

(2) *Availability of the election.* The election described in this paragraph (d) is available to any taxpayer that produces plants in a farming business, except that no election may be made by a corporation, partnership, or tax shelter required to use the accrual method under section 447 or prohibited from using the cash method by section 448(a)(3). Moreover, the election does not apply to the costs of planting, cultivation, maintenance, or development of a citrus or almond grove (or any part thereof) incurred prior to the close of the fourth taxable year beginning with the taxable year in which the trees were planted in the permanent grove (including costs incurred prior to the permanent planting). If a citrus or almond grove is planted in more than one taxable year, the portion of the grove planted in any one taxable year is treated as a separate grove for purposes of determining the year of planting.

(3) *Time and manner of making the election*—(i) *Automatic election.* A taxpayer makes the election under this paragraph (d) by not applying the rules of section 263A to determine the capitalized costs of plants produced in a farming business and by applying the special rules in paragraph (d)(4) of this section on its original return for the first taxable year in which the taxpayer is otherwise required to capitalize section 263A costs. Thus, in order to be treated as having made the election under this paragraph (d), it is necessary to report both income and expenses in accordance with the rules of this paragraph (d) (for example, it is necessary to use the alternative depreciation system as provided in paragraph (d)(4)(ii) of this section). For example, a farmer who deducts costs that are otherwise required to be capitalized under section 263A but fails to use the alternative depreciation system under section 168(g)(2) for applicable property placed in service has not made an election under this paragraph (d) and is not in compliance with the provisions of section 263A. In the case of a partnership or S corporation, the election must be made by the partner, shareholder, or member.

(ii) *Nonautomatic election.* A taxpayer that does not make the election under this paragraph (d) as provided in paragraph (d)(3)(i) must obtain the consent of the Commissioner to make the election by filing a Form 3115, Application for Change in Method of Accounting, in accordance with § 1.446–1(e)(3).

(4) *Special rules.* If the election under this paragraph (d) is made, the taxpayer is subject to the special rules in this paragraph (d)(4).

(i) *Section 1245 treatment.* The plant produced by the taxpayer is treated as section 1245 property and any gain resulting from any disposition of the plant is recaptured (that is, treated as ordinary income) to the extent of the total amount of the deductions that, but for the election, would have been required to be capitalized with respect to the plant. In calculating the amount of gain that is recaptured under this paragraph (d)(4)(i), a taxpayer may use the farm-price method or another simplified method permitted under these regulations in determining the deductions that otherwise would have been capitalized with respect to the plant.

(ii) *Required use of alternative depreciation system.* If the taxpayer or a related person makes an election under this paragraph (d), the alternative depreciation system (as defined in section 168(g)(2)) must be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. The requirement to use the alternative depreciation system by reason of an election under this paragraph (d) will not prevent a taxpayer from making an election under section 179 to deduct certain depreciable business assets.

(iii) *Related person*—(A) *In general.* For purposes of this paragraph (d)(4), related person means—

(*1*) The taxpayer and members of the taxpayer's family;

(*2*) Any corporation (including an S corporation) if 50 percent or more of the stock (in value) is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family;

(*3*) A corporation and any other corporation that is a member of the same controlled group (within the meaning of section 1563(a)(1)); and

(*4*) Any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(B) *Members of family.* For purposes of this paragraph (d)(4)(iii), the terms ''members of the taxpayer's family'', and ''members of family'' (for purposes of applying section 318(a)(1)), means the spouse of the taxpayer (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance) and any of the taxpayer's children (including legally adopted children) who have not reached the age of 18 as of the last day of the taxable year in question.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (d):

Example 1. (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows apple trees that have a preproductive period greater than 2 years. In addition, Farmer A grows and harvests wheat and other grains. Farmer A elects under this paragraph (d) not to have the rules of section 263A apply to the costs of growing the apple trees.

(ii) In accordance with paragraph (d)(4) of this section, Farmer A is required to use the alternative depreciation system described in section 168(g)(2) with respect to all property used predominantly in any farming business in which Farmer A engages (including the growing and harvesting of wheat) if such property is placed in service during a year for which the election is in effect. Thus, for example, all assets and equipment (including trees and any equipment used to grow and harvest wheat) placed in service during a year for which the election is in effect must be depreciated as provided in section 168(g)(2).

Example 2. Assume the same facts as in *Example 1*, except that Farmer A and members of Farmer A's family (as defined in paragraph (d)(4)(iii)(B) of this section) also own 51 percent (in value) of the interests in Partnership P, which is engaged in the trade or business of growing and harvesting corn. Partnership P is a related person to Farmer A under the provisions of paragraph (d)(4)(iii) of this section. Thus, the requirements to use the alternative depreciation system under section 168(g)(2) also apply to any property used predominantly in a trade or business of farming which Partnership P places in service during a year for which an election made by Farmer A is in effect.

(e) *Exception for certain costs resulting from casualty losses*—(1) *In general.* Section 263A does not require the capitalization of costs that are attributable to the replanting, cultivating, maintaining, and developing of any plants bearing an edible crop for human consumption (including, but not limited to, plants that constitute a grove, orchard, or vineyard) that were lost or damaged while owned by the taxpayer by reason of freezing temperatures, disease, drought, pests, or other casualty (replanting costs). Such replanting costs may be incurred with respect to property other than the property on which the damage or loss occurred to the extent the acreage of the property with respect to which the replanting costs are incurred is not in excess of the acreage of the property on which the damage or loss occurred. This paragraph (e) applies only to the replanting of plants of the same type as those lost or damaged. This paragraph (e) applies to plants replanted on the property on which the damage or loss occurred or property of the same or lesser acreage in the United States irrespective of differences in density between the lost or damaged and replanted plants. Plants bearing crops for human consumption are those crops normally eaten or drunk by humans. Thus, for example, costs incurred with respect to replanting plants bearing jojoba beans do not qualify for the exception provided in this paragraph (e) because that crop is not normally eaten or drunk by humans.

(2) *Ownership.* Replanting costs described in paragraph (e)(1) of this section generally must be incurred by the taxpayer that owned the property at the time the plants were lost or damaged. Paragraph (e)(1) of this section will apply, however, to costs incurred by a person other than the taxpayer that owned the plants at the time of damage or loss if—

(i) The taxpayer that owned the plants at the time the damage or loss occurred owns an equity interest of more than 50 percent in such plants at all times during the taxable year in which the replanting costs are paid or incurred; and

(ii) Such other person owns any portion of the remaining equity interest and materially participates in the replanting, cultivating, maintaining, or developing of such plants during the taxable year in which the replanting costs are paid or incurred. A person will be treated as materially participating for purposes of this provision if such person would otherwise meet the requirements with respect to material participation within the meaning of section 2032A(e)(6).

(3) *Examples.* The following examples illustrate the provisions of this paragraph (e):

Example 1. (i) Farmer A grows cherry trees that have a preproductive period in excess of 2 years and produce an annual crop. These cherries are normally eaten by humans. Farmer A grows the trees on a 100 acre parcel of land (parcel 1) and the groves of trees cover the entire acreage of parcel 1. Farmer A also owns a 150 acre parcel of land (parcel 2) that Farmer A holds for future use. Both parcels are in the United States. In 2000, the trees and the irrigation and drainage systems that service the trees are destroyed in a casualty (within the meaning of paragraph (e)(1) of this section). Farmer A installs new irrigation and drainage systems on parcel 1, purchases young trees (seedlings), and plants the seedlings on parcel 1.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. In accordance with paragraph (e)(1) of this section, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A.

Example 2. (i) Assume the same facts as in *Example 1* except that Farmer A decides to

replant the seedlings on parcel 2 rather than on parcel 1. Accordingly, Farmer A installs the new irrigation and drainage systems on 100 acres of parcel 2 and plants seedlings on those 100 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. Because the acreage of the related portion of parcel 2 does not exceed the acreage of the destroyed orchard on parcel 1, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A. See paragraph (e)(1) of this section.

Example 3. (i) Assume the same facts as in *Example 1* except that Farmer A replants the seedlings on parcel 2 rather than on parcel 1, and Farmer A additionally decides to expand its operations by growing 125 rather than 100 acres of trees. Accordingly, Farmer A installs new irrigation and drainage systems on 125 acres of parcel 2 and plants seedlings on those 125 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. The costs of planting, cultivating, developing, and maintaining 100 acres of the trees during their preproductive period are not required to be capitalized by section 263A. The costs of planting, cultivating, maintaining, and developing the additional 25 acres are, however, subject to capitalization under section 263A. See paragraph (e)(1) of this section.

(4) *Special rule for citrus and almond groves*—(i) *In general.* The exception in this paragraph (e) is available with respect to replanting costs of a citrus or almond grove incurred prior to the close of the fourth taxable year after replanting, notwithstanding the taxpayer's election to have section 263A not apply (described in paragraph (d) of this section).

(ii) *Example.* The following example illustrates the provisions of this paragraph (e)(4):

Example. (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows citrus trees that have a preproductive period of 5 years. Farmer A elects, under paragraph (d) of this section, not to have section 263A apply. This election, however, is unavailable with respect to the costs of producing a citrus grove incurred within the first 4 years beginning with the year the trees were planted. See paragraph (d)(2) of this section. In year 10, after the citrus grove has become productive in marketable quantities, the citrus grove is destroyed by a casualty within the meaning of paragraph (e)(1) of this section. In year 10, Farmer A acquires and plants young citrus trees in the same grove to replace those destroyed by the casualty.

(ii) Farmer A must capitalize the costs of producing the citrus grove incurred before the close of the fourth taxable year beginning with the year in which the trees were permanently planted. As a result of the election not to have section 263A apply, Farmer A may deduct the preproductive period costs incurred in the fifth year. In year 10, Farmer A must capitalize the acquisition cost of the young trees. However, the costs of planting, cultivating, developing, and maintaining the young trees that replace those destroyed by the casualty are exempted from capitalization under this paragraph (e).

(f) *Effective date and change in method of accounting*—(1) *Effective date.* In the case of property that is not inventory in the hands of the taxpayer, this section is applicable to costs incurred after August 21, 2000 in taxable years ending after August 21, 2000. In the case of inventory property, this section is applicable to taxable years beginning after August 21, 2000.

(2) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. For property that is not inventory in the hands of the taxpayer, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section for costs incurred after August 21, 2000, provided the change is made for the first taxable year ending after August 21, 2000. For inventory property, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section for the first taxable year beginning after August 21, 2000. A taxpayer changing its method of accounting under this paragraph (f)(2) must file a Form 3115, ''Application for Change in Accounting Method,'' in accordance with the automatic consent procedures in Rev. Proc. 99–49 (1999–2 I.R.B. 725) (see § 601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 99–49 do not apply, provided the taxpayer's method of accounting for property produced in a farming business is not an issue under consideration within the meaning of section 3.09 of Rev. Proc. 99–49. If the taxpayer is under examination, before an appeals office, or before a federal court at the time that a copy of the Form 3115 is filed with the national office, the taxpayer must provide a duplicate copy of the Form 3115 to the examining agent, appeals officer, or counsel for the government, as appropriate, at the time the copy of the Form 3115 is filed. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent, appeals officer, or counsel for the government, as appropriate. Further, in the case of property that is not inventory in the hands of the taxpayer, a change under this paragraph (f)(2) is made on a cutoff basis as described in section 2.06 of Rev. Proc. 99–49 and without the audit protection provided in section 7 of Rev. Proc. 99–49. However, a taxpayer may receive such audit protection for non-inventory property by taking into account any section 481(a) adjustment that results from the change in method of accounting to comply with this section. A taxpayer that opts to determine a section 481(a) adjustment (and, thus, obtain audit protection) for non-inventory property must take into account only additional section 263A costs incurred after December 31, 1986, in taxable years ending after December 31, 1986. Any change in method of accounting that is not made for the taxpayer's first taxable year ending or beginning after August 21, 2000, whichever is applicable, must be made in accord with the procedures in Rev. Proc. 97–27 (1997–1 C.B. 680) (see § 601.601(d)(2) of this chapter).

§ 1.263A–4T [Removed]

Par. 7. Section 1.263A–4T is removed.

Par. 8. Section 1.471–6 is amended as follows:

1. The third sentence of paragraph (d) is revised.

2. The last sentence of paragraph (f) is revised. The revisions read as follows:

§ 1.471–6 Inventories of livestock raisers and other farmers.

* * * * *

(d) * * * However, see § 1.263A–4(c)(3) for an exception to this rule. * * *

* * * * * *

(f) * * * See § 1.263A–4 for rules regarding the computation of costs for purposes of the unit-livestock-price-method.

* * * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 10, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–21103 Filed 8–18–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ072–0085C; FRL–6852–6]

Approval and Promulgation of Maintenance Plan and Designation of Area for Air Quality Planning Purposes for Carbon Monoxide; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on June 8, 2000 approving the request of Arizona for the redesignation of the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard and for approval of a maintenance plan.

EFFECTIVE DATE: This action is effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1159.

SUPPLEMENTARY INFORMATION: On June 8, 2000 at 65 FR 36353, EPA published a final rulemaking action approving the request of Arizona for the redesignation of the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard and for approval of a maintenance plan. The final rulemaking contained amendments to 40 CFR part 52 relating to revised Arizona statutes and to 40 CFR part 81 relating to attainment status designations. Two of those amendments were incomplete. This action will correct the listing under § 52.120(c)(96)(i)(A)(1) to add Sections 7 and 8 of House Bill 2254 which were omitted. This action will also correct the description of the boundaries for the ''Tucson Area'' contained in § 81.303 which was incomplete.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is amending the tables in 40 CFR 52.120 and 81.303 that were contained in the final approval of the Arizona request for redesignation to attainment of the carbon monoxide National Ambient Air Quality Standard for the Tucson Air Planning Area and approval of a maintenance plan that was published in the **Federal Register** on June 8, 2000. That redesignation was previously subject to notice and comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Summary of Final Action

In this action EPA is correcting amendments to 40 CFR part 52, subpart D and 40 CFR part 81, subpart C that were contained in the final **Federal Register** Notice published on June 8, 2000 redesignating the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard. Specifically, this action amends § 52.120 relating to Arizona revised statutes and § 81.303 describing the boundaries for the Tucson Air Planning Area.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA)(Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implication of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 8, 2000 **Federal Register** action.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 21, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

John Wise,

Acting Regional Administrator, Region IX.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by revising paragraph (c)(96)(i)(A)*(1)* to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(i) * * *

(A) * * *

(96) * * *

(*1*) House Bill 2254, Section 1: ARS 41–3009.01 (amended); Section 2: 49–541.01 (amended); Section 3: 49–542 (amended); Section 4: 49–545 (amended); Section 5: 49–557 (amended); Section 6: 49–573 (amended); Section 7: 41–803 (amended) and Section 8: 41–401.01 (amended), adopted on May 18, 1999.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Arizona

2. In § 81.303 the table for ''Arizona-Carbon Monoxide'' is amended by revising the entry for ''Tucson area: Pima County (part)'' to read as follows:

§ 81.303 Arizona

* * * * *

Designated Area	Arizona—Carbon Monoxide Designation		Classification	
	Date	Type Attainment	Date	Type
* * *	*	*	*	*
Tucson Area:	September 20, 2000.			
Pima County (part):				
Township and Ranges as follows: T11–12S, R12–14E; T13–15S, R11–16E; and T16S, R12–16e Gila and Salt River Baseline and Meridian excluding portions of the Saguaro National Monument and the Coronado National Forest.				
* * *	*	*	*	*

[FR Doc. 00–21079 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WT Docket No. 99–263; FCC 00–292]

Availability of Monetary Damages for State Law Claims Against CMRS Providers

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: In this document, the Commission responds to a Petition for Declaratory Ruling, and finds that certain portions of the Communications Act do not generally preempt the award of monetary damages against Commercial Mobile Radio Service Providers by state courts based on state consumer protection, tort, or contract claims. The action is taken to respond to the Petition and to clarify this issue.

FOR FURTHER INFORMATION CONTACT: Mary Woytek or Susan Kimmel, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order (MO&O) in WT Docket No. 99–263, FCC 00–292, adopted August 3, 2000, and released August 14, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours at the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. In this Memorandum Opinion and Order (MO&O), the Commission responds to a Petition for Declaratory Ruling, filed on July 16, 1999, by Wireless Consumers Alliance, Inc. (WCA Petition). The WCA Petition concerns whether the provisions of the Communications Act of 1934, as amended, serve to preempt state courts from awarding monetary relief against Commercial Mobile Radio Service (CMRS) providers: (a) for violating state consumer protection laws prohibiting false advertising and other fraudulent business practices, or (b) in the context of contractual disputes and tort actions adjudicated under state contract and tort laws. In addition, the issue regarding damage awards raised in a Petition for Declaratory Ruling filed by Southwest Bell Mobile Systems is incorporated into the Commission's response to the WCA Petition. (FCC 99–365, 14 FCC Rcd 19898, 1999.)

2. The Commission finds that section 332(c)(3)(A) does not generally preempt the award of monetary damages by state courts based on state consumer protection, tort, or contract claims. The Commission notes, however, that whether a specific damage calculation is prohibited by section 332 will depend on the specific details of the award and the facts and circumstances of a particular case.

3. Specifically, the Commission concludes that award of damages to customers damaged by a CMRS provider's breach of contract or fraud violation would not normally require a state court to prescribe, set or fix wireless rates. A consideration of the price originally charged, for the purposes of determining the extent of harm or injury involved, is not necessarily an inquiry into the reasonableness of the original price and therefore is permissible.

4. A court will have overstepped its authority under section 332 if, in determining damages, it does enter into a regulatory type of analysis that purports to determine the reasonableness of a prior rate or it sets a prospective charge for services. Thus, while the Commission concludes that section 332 does not generally preempt damage awards based on state contract or consumer protection laws, this is not to say that such awards can never amount to rate or entry regulation. Nor does the Commission conclude that a damage award in the WCA litigation or any other specific case would or would not be consistent with section 332(c)(3). The Commission believes that the question of whether a specific damage award or a specific grant of injunctive relief constitutes rate or entry regulation prohibited by section 332 (c)(3) would depend on all facts and circumstances of the case.

Ordering Clauses

5. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and 154 (j), section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), and § 1.2 of the Commission's Rules, 47 CFR 1.2, the Petition for Declaratory Ruling filed by Wireless Consumer Alliance, Inc. is granted in part, as indicated in the full text of this MO&O, and otherwise is denied.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–21135 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1694; MM Docket No. 99–362; RM–9730]

Radio Broadcasting Services; Canton and Morristown, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio Power, Inc., licensee of Station WVLF, Canton, NY, and Waters Communications, Inc., licensee of Station WNCQ–FM, Morristown, NY, substitutes Channel 275C3 for Channel 244A at Canton, NY, and modifies the license of Station WVLF to specify operation on the higher powered channel and substitutes Channel 244C3 for Channel 275A at Morristown, NY, and modifies the license of Station WNCQ-FM to specify operation on the higher powered channel. These allotments will provide each community with wide coverage area FM channels. *See* 65 FR 270. January 4, 2000. Channel 275C3 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 12 kilometers (7.4 miles) north, at coordinates 44–41–51 NL; 75–07–35 WL, to accommodate Radio Power's requested site. Channel 275C3 at Canton is short-spaced to Channel 276A at Valleyfield, Quebec, Canada. Channel 244C3 can be allotted to Morristown in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 12 kilometers (7.4 miles) east, at coordinates 44–36–00 NL; 75–30–00 WL, to accommodate Waters desired transmitter site. *See* Supplementary Information.

DATES: Effective September 11, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–362, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Channel 244C3 at Morristown is short-spaced to Channel 243A at Buckingham, Quebec, and Channel 244C1 at Pembroke, Ontario, Canada. Canadian concurrence in these allotments, as specially negotiated short-spaced allotments, has been requested since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border, but has not yet been received. However, rather than delay any further the opportunity of the licensees of Stations WVLF and WNCQ-FM to file applications specifying operation on the higher powered channels at Canton and Morristown, respectively, we will allot Channel 275C3 to Canton and Channel 244C3 to Morristown. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension, or termination without the right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if objected to by Industry Canada.'' In 1987, Channel 244A, Canton, NY was added to the community, 52 FR 39783 (October 23, 1987), but inadvertently removed from the **Federal Register** in 1988, 53 FR 19913 (June 1, 1988).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 275C3 at Canton and removing Channel 275A and adding Channel 244C3 at Morristown.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21193 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 162
Monday, August 21, 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

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 00–006–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to be treated or meet other special conditions. This action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction of injurious plant pests by imported fruits and vegetables.

We are also proposing to recognize the State of Baja California Sur, Mexico, as an area free of certain fruit flies and recognize Belize and the Department of Peten, Guatemala, as areas free of the Mediterranean fruit fly. This action would relieve import restrictions while continuing to prevent the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive by October 20, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–006–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as ''the regulations'') prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within the United States.

We are proposing to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We are proposing this action at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would have to be imported under permit and would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture (USDA) inspector, to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with fruit flies or other injurious plant pests that an inspector determines that it cannot be cleaned or treated.

Some of the fruits and vegetables proposed for importation would be required to meet other special conditions. The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of fruit flies and other injurious plant pests by the importation of these fruits and vegetables.

Subject to Inspection Upon Arrival

We are proposing to amend the list in § 319.56–2t to recognize the following fruits and vegetables as eligible for importation into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Marjoram	*Origanum* spp.	Above ground parts.
	Oregano	*Origanum* spp.	Above ground parts.
Costa Rica	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp.	Whole plant of edible varieties only.

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Country/locality	Common name	Botanical name	Plant part(s)
Honduras	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp.	Whole plant of edible varieties only.
Peru	Marjoram	*Origanum* spp.	Above ground parts.
Spain	Eggplant	*Solanum melongena*	Fruit, commercial shipments only.
	Watermelon	*Citrullus vulgaris*	Fruit, commercial shipments only.

We have determined that any injurious plant pests that might be carried by any of the listed fruits or vegetables would be readily detectable by an APHIS inspector. Therefore, the provisions at § 319.56–6 concerning inspection and disinfection at the port of first arrival appear adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables as specified above. However, we believe that eggplant and watermelon from Spain that are not produced in commercial operations are more likely to be infested with plant pests than are eggplant and watermelon that arrive in commercial shipments. Therefore, to further reduce the pest risk associated with the importation of eggplant and watermelon from Spain, we are proposing to allow only commercial shipments of those fruits and vegetables to enter the United States. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification is based on a variety of indicators, including, but not limited to: quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Wild or ''backyard'' eggplant and watermelon are generally grown and handled under very different conditions in Spain than commercially-produced fruits and vegetables (*e.g.*, wild or backyard produce usually involves different varieties of produce and different cultivating techniques, little or no pest control, and a lack of sanitary controls during growing and packing, such as removal and destruction of overripe and damaged fruit). As a result, there is reason to believe that wild or backyard eggplant and watermelon present a greater pest risk than commercially produced eggplant and watermelon.

Treatment Required

Section 319.56–2x lists fruits and vegetables for which treatment is required. We are proposing to amend the list in § 319.56–2x to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated only if they have been treated in accordance with the PPQ Treatment Manual, which is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. These fruits and vegetables are attacked by injurious plant pests, as specified below, in their country or locality of origin. We inspect these commodities for some identified pests and treat commodities for pests that cannot be detected by visual inspection. We would amend the PPQ Treatment Manual to show the required treatments.

Country/locality	Common name	Botanical name	Plant part(s)	Treatment (see table below)	Pests of concern
Argentina	Kiwi	*Actinidia deliciosa*	Fruit	Cold treatment	*Anastrepha fraterculus* and *Ceratitis capitata*
Chile	Passion fruit	*Passiflora* spp.	Fruit	Soapy water and wax treatment.	*Brevipalpus chilensis*
Mexico	Carambola	*Averrhoa carambola*	Fruit	Cold treatment	*Anastrepha* spp. (except *Anastrepha ludens*) and *Ceratitis capitata*
Spain	Lettuce	Lactuca spp.	Above ground parts, commercial shipments only.	Methyl bromide	*Autographa gamma, Helicoverpa armigera, Mamestra brassicae*, and *Spodoptera littoralis*
	Kiwi	*Actinidia deliciosa*	Fruit	Cold treatment	*Ceratitis capitata*

TREATMENTS

Temperature	Exposure period (days)
Cold treatment for *Ceratitis capitata* and *Anastrepha* spp. (other than *Anastrepha ludens*)	
32 °F or below	11
33 °F or below	13
34 °F or below	15
35 °F or below	17

TREATMENTS—Continued

Temperature	Exposure period (days)
Cold treatment for ***Ceratitis capitata*** only	
32 °F or below	10
33 °F or below	11
34 °F or below	12
35 °F or below	14
36 °F or below	16

Soapy water and wax treatment for ***Brevipalpus chilensis***

1. Immerse fruit for 20 seconds in a soapy water bath of one part soap solution (such as Deterfruit) to 3,000 parts water.
2. Follow the soapy bath with a pressure shower rinse to remove all the soapy excess.
3. Immerse fruit for 20 seconds in an undiluted wax coating (such as Johnson's Wax Primafresh 31 Kosher Fruit coating). The wax coating should cover the entire surface of the fruit.

Methyl bromide treatment (tarpaulin or chamber) for ***Autographa gamma, Helicoverpa armigera, Mamestra brassicae,*** and ***Spodoptera littoralis***

Temperature	Dosage rate (lb/1,000ft^3)	Minimum concentration readings (ounces) at:	
		0.5 hours	2 hours
70 °F or above	2.0	26	14
60–69 °F	2.5	32	24
50–59 °F	3.0	38	29
45–49 °F	3.5	43	34
40–44 °F	4.0	48	38

Based on research we have evaluated and approved, we have determined that the treatments described above are effective against the specified pests.[2]

Pest risk analyses conducted by APHIS indicate that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6. Mangoes from Mexico

We are also proposing to amend the requirements in § 319.56–2x concerning mangoes from Mexico. Currently, mangoes from Mexico are eligible for importation into the United States if they are treated in accordance with the PPQ Treatment Manual.

Mangoes from Mexico are presently being treated in Mexico under the supervision of an APHIS inspector, who certifies that treatment has been performed by completing PPQ Form 203, ''Foreign Site Certificate of Inspection and/or Treatment.'' This form, which may only be signed by an APHIS official, must accompany the shipment of mangoes to the port of arrival in the United States.

APHIS is proposing to allow Mexico's plant health organization to certify treatment of mangoes. We plan to conduct random spot checks of mangoes that have been treated in Mexico to ensure treatment application and effectiveness. In conjunction with this change, we would require shipments of treated mangoes from Mexico to be accompanied by a phytosanitary certificate issued by Mexico's plant health organization that states that the mangoes were treated in accordance with the PPQ Treatment Manual.

Note: Under requirements proposed elsewhere in this document, mangoes grown in a fruit fly-free area listed in § 319.56–2(h) would not be required to be treated under § 319.56–2x. (See ''Fruit Fly-Free Areas in Mexico,'' below.)

Fruit Fly-Free Areas in Mexico

The regulations at § 319.56–2(h) list the municipalities in the Mexican States of Baja California Sur, Chihuahua, and Sonora that are recognized, in accordance with the criteria for definite areas in § 319.56–2(e)(4) and (f), as areas free of the following fruit flies: Mediterranean fruit fly (*Ceratitis capitata*)(Medfly), Mexican fruit fly (*Anastrepha ludens*), dark fruit fly (*Anastrepha serpentina*), West Indian fruit fly (*Anastrepha obliqua*), and South American fruit fly (*Anastrepha fraterculus*). Apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported from these municipalities without treatment for the listed fruit flies.

Mexico recently provided APHIS with fruit fly survey data that demonstrates that the municipalities of La Paz and Los Cabos in the State of Baja California Sur meet the criteria of § 319.56(e) and (f) for a definite area free from the fruit flies listed above. With the listing of La Paz and Los Cabos, the entire State of Baja California Sur would be a fruit fly free area, and we are proposing to list it as such in § 319.56–2(h).

In addition, we are proposing to add mangoes to the list of fruits that may be imported from these areas without treatment for the listed fruit flies. Mangoes from Mexico are currently restricted entry into the United States due the risk of fruit fly infestation. No species of fruit fly known to attack mango exists in any of the areas listed in § 319.56–2(h). Therefore, mangoes from these areas would not present a risk of fruit fly introduction. In conjunction with this change, we are also proposing to amend the entry for mangoes from Mexico in § 319.56–2x. The amended entry would make it clear that only mangoes from areas in Mexico not listed in § 319.56–2(h) are subject to treatment for fruit fly.

We are also proposing to make nonsubstantive changes to § 319.56–2(h). First, we propose to correct the spelling of the Sonoran municipalities of San Ignacio Rio Muerto and Navojoa.

[2] Information on the research is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Second, we propose to move the list of fruits eligible for importation into the United States without treatment for fruit flies to § 319.56–2t. We would stipulate in each fruit's listing in § 319.56–2t that the fruit may only be imported without treatment if it is from an area designated in § 319.56–2(h) as free of fruit flies.

In addition to the changes just described, we propose to require that apples, apricots, grapefruit, mangoes, oranges, peaches, persimmons, pomegranates, and tangerines imported from areas designated in § 319.56–2(h) as free of fruit flies be accompanied by a phytosanitary certificate issued by the Government of Mexico stating that the fruits originated from an area listed in § 319.56–2(h). This will help distinguish that fruit from fruit that must be treated.

Mediterranean Fruit Fly-Free Areas

The regulations in § 319.56–2(j) recognize the entire country of Chile as free of Medfly. Fruits and vegetables otherwise eligible for importation into the United States under the regulations may be imported from Chile without treatment for Medfly.

Recently, Guatemala provided APHIS with trapping data that demonstrates that the Department of Peten meets the criteria of § 319.56 (e) and (f) for a definite area free from Medfly. Belize also provided APHIS with trapping data demonstrating that the entire country of Belize meets the criteria of § 319.56 (e) and (f) for a definite area free from Medfly.

We are, therefore, proposing to add Belize and the Department of Peten, Guatemala, to § 319.56–2(j).

In conjunction with this change, we propose to amend §§ 319.56–2t and 319.56–2x. Section 319.56–2t lists the areas of Belize from which papaya may be imported without treatment for Medfly. Section 319.56.2x requires treatment for papayas imported from areas of Belize not designated as Medfly-free areas. We would add all of Belize to the entry in § 319.56–2t and remove the entry for papaya from Belize from § 319.56–2x. We would also add papaya from Medfly-free areas in Guatemala to the list of fruits and vegetables in § 319.56–2t that are eligible for entry into the United States without mandatory treatment for Medfly or other special requirements. Note: Papaya from Belize and Guatemala would not be eligible for entry into Hawaii due to the existence of the papaya fruit fly in those countries.

Papaya from Central America

The regulations in § 319.56–2w provide that papayas from certain areas in Brazil and Costa Rica may be imported into the United States if they are grown, treated, packed, labeled, and shipped according to certain specifications to prevent the introduction of fruit flies into the United States.

We are proposing to allow the importation of papayas from the following areas in El Salvador, Guatemala, Honduras, Nicaragua, and Panama under those same conditions:

Country	Area(s)
El Salvador	Departments of La Libertad, La Paz, and San Vicente.
Guatemala	Departments of Escunitla, Retalhuleu, Santa Rosa, and Suchitepequez.
Honduras	Departments of Comayagua, Cortes, and Santa Barbara.
Nicaragua	Departments of Carazo, Granada, Managua, Masaya, and Rivas.
Panama	Provinces of Cocle, Herrera, and Los Santos. Districts of David, Aleanje, and Dolega in the Province of Chiriqui. All areas in Panama located west of the Panama Canal

Papayas from the areas listed above would be allowed to be imported into the United States only if they meet the following conditions:

1. The papayas were grown and packed for shipment to the United States in one of the areas listed in the table above.

This condition would ensure that papayas intended for the United States would only be grown and packed in areas where fruit fly traps are maintained and where the other elements of the systems approach described below are in place.

2. Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the area where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-quarter of shell surface yellow), and all culled and fallen fruit were removed from the field at least twice a week.

Papayas that are one-half or more ripe, as well as culled or fallen papayas, could serve as host material for Medfly and South American fruit fly. Therefore, this condition would greatly reduce the risk that Medfly or South American fruit fly would be attracted to the fields where papayas intended for importation into the United States are grown.

3. The papayas were treated with a hot water treatment consisting of 20 minutes in water at 49 °C (120.2 °F).

We believe that hot water treatment, in conjunction with other safeguards, would reduce the likelihood that papayas will introduce injurious plant pests into the United States.

4. When packed, the papayas were less than one-half ripe (shell surface no more than one-quarter yellow, surrounded by light green) and appeared to be free of all injurious plant pests.

This condition would also reduce the risk of introduction of Medfly or South American fruit fly, as well as other injurious plant pests, into the United States. Papayas themselves are not a preferred host for these fruit flies, and papayas that are less than one-half ripe pose very little risk of attracting Medfly or South American fruit fly.

5. The papayas were safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. The package containing the papayas does not contain any other fruit, including papayas not qualified for importation into the United States.

This condition would ensure that papayas that have already been inspected and packaged for shipment to the United States would not be at risk for fruit fly infestation.

6. All cartons in which papayas are packed must be stamped ''Not for importation into or distribution in HI.''

This condition would ensure that the papaya fruit fly, which is know to exist in most of the countries of Central America and the Carribean, is not introduced into Hawaii, where it is a quarantine pest.

7. All activities described in paragraphs (a) through (f) of this section were carried out under the supervision and direction of plant health officials of the national Ministry of Agriculture.

The supervision of the Ministry of Agriculture would help ensure that all of the activities required by the regulations were properly carried out.

8. Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were

placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. If the average Jackson trap catch was greater than 7 Medflies per trap per week, measures were taken to control the Medfly population in the production area. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

This condition would ensure that the earliest possible detection of the presence of fruit flies in and around fields where papayas are grown can be made. If a fruit fly is trapped, the Ministry of Agriculture of the exporting country would increase the trap density in the area and, if more fruit flies are found, begin malathion bait sprays. This condition would also allow APHIS to monitor the trapping records of the area for a 1-year period.

9. If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

This threshold for Medfly and South American fruit fly trapping will help detect increasing populations of these fruit flies in growing areas and will help ensure that these fruit flies are not associated with imports of papayas.

10. All shipments of papayas must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

This condition would help ensure that the provisions of the regulations have been met.

We believe that these requirements would be sufficient to prevent the introduction of fruit flies into the United States by papayas from the listed areas. The papayas would also be subject to inspection, disinfection, or both, at the port of first arrival in accordance with § 319.56–6.

Peppers From Israel

The regulations in § 319.56–2u(b) contain requirements for the importation of peppers from Israel, including the requirement that shipments of peppers must be packaged in fruit fly proof containers and be shipped only to the Tel Aviv airport for direct air export to the United States. We are proposing, at the request of the Government of Israel, to remove the requirement that the peppers be shipped only to Tel Aviv airport for direct air export to the United States. We are taking this action because we believe that insect-proof packaging is sufficient to provide protection against infestation by fruit flies and other insect pests. This would make a number of shipping alternatives available to exporters and will not result in an increased pest risk. We also propose to change the words ''fruit fly-proof containers'' to ''insect-proof containers.''

Ya Pears From China

The regulations in § 319.56–2ee list the conditions under which Ya variety pears (fruit, *Pyrus bretschneideri*) may be imported into the United States from the Hebei Province of China.

We are proposing to allow Ya variety pears from the Shadong Province of China to be imported into the United States under the same conditions, which are as follows:

Ya variety pears must be grown in an APHIS-approved export growing area of the province by growers registered with the Peoples' Republic of China Ministry of Agriculture. The Ministry of Agriculture is responsible for conducting field inspections for signs of pest infestation during the growing season. The registered growers are responsible for following the phytosanitary measures agreed upon by APHIS and the Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for insect pests to attack the fruit during the growing season. The bags are required to remain on the pears through the harvest and during their movement to the packing house.

In order to prevent Ya pears intended for export to the United States from being commingled with any other fruit, the packing houses in which the pears are prepared for exportation to the United States may not be used for other fruit during the pear export season. The packing houses may accept only those pears that are still in intact bags. The pears must be loaded into containers at the packing house and the containers then sealed before movement to the port of export to prevent the fruit from being exposed to insect pests while en route to the port of export. The pears must also be cold treated for the Oriental fruit fly, *Bactrocera dorsalis,* in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual.

Each shipment of Ya pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions discussed above have been met.

We believe that these growing, harvest, shipment, and treatment conditions would be adequate to prevent the introduction of *Bactrocera dorsalis* and other insect pests into the United States via Ya pears from the Shadong Province of China.

Peppers from New Zealand

We are proposing to allow peppers (*Capsicum* spp.) from New Zealand to be imported into the United States under certain conditions, which would be set forth in a new § 319.56–2hh. Because peppers can be hosts of several serious plant pests, including *Helicoverpa armigera* Hubner and *Spodoptera litura* Fabricius, we would require that the peppers be grown in insect-proof greenhouses approved by the New Zealand Ministry of Agriculture and Forestry (MAF). We would require the greenhouses to be equipped with double self-closing doors and to cover any vents or openings in the greenhouses (other than the double closing doors) with 0.6 mm screening in order to prevent the entry of pests into the greenhouse. We would also require that these greenhouses be examined periodically by MAF to ensure that the screens are intact.

In order to verify that these conditions are being met in New Zealand, we would require peppers from New Zealand to be accompanied by a phytosanitary certificate of inspection stating that the peppers were grown in greenhouses in accordance with the above conditions.

We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56–6, would be adequate to prevent the introduction of plant pests into the United States with peppers imported from New Zealand.

Miscellaneous

We are also proposing to make several minor, nonsubstantive editorial changes for clarity and consistency.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out

below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

We are proposing to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to such disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. This action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

We are also proposing to recognize two additional municipalities in the State of Baja California Sur, Mexico, as fruit fly-free areas and recognize Belize and the Department of Peten, Guatemala, as areas free of the Mediterranean fruit fly.

Availability of Data

For some of the commodities proposed for importation into the United States in this document, data on the levels of production and the anticipated import volume is unavailable for a number of reasons. Some of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States; generally, less statistical data is collected—and, therefore, available—for commodities produced in small quantities when compared to a country's more heavily produced commodities. Estimates of the potential volume of exports of commodities from foreign countries to the United States are often difficult to obtain also, due in part to the uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States.

Effects on Small Entities

Data on the number and size of U.S. producers of the various commodities proposed for importation into the United States in this document is not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities listed below are small. Potential economic effects that could occur if this proposal is adopted are discussed below by commodity and country of origin.

Oregano and Marjoram from Argentina

There are no data available regarding production of oregano and marjoram by the United States. Argentina claims to produce approximately 800 tons of oregano per year, but only exports 20 to 60 tons of that amount. If this rule is adopted, it is likely that some of those exports could be diverted to the United States. However, it is unlikely that Argentina would increase its production of oregano, and therefore, any exports to the United States would likely be minimal and would not have any significant economic effect on U.S. producers, whether small or large, or consumers. Data on production of marjoram by Argentina are not available. We are, therefore, unable to determine the effect this proposed rule would have on U.S. producers or consumers of marjoram. We are requesting the public to provide APHIS with any available data regarding production of marjoram in the United States and in Argentina.

Cole and mustard crops (brassica species) from Costa Rica and Honduras

The United States produced 1.37 million tons of *Brassica* spp. in 1997 and exported 46,212 tons and imported 40,604 tons in 1999. Any imports of *Brassica* spp. from Costa Rica that would result if this rule is adopted are likely to be only a small fraction of domestic production and have a negligible economic effect on domestic producers and consumers. Honduras produced 259 tons of cole crops in 1998 and exported 171 tons to other Central American countries. Honduras could potentially expand production and export up to 330 tons to the United States if there is sufficient market demand. However, potential imports from Honduras represent only .024 percent of domestic production and .8 percent of current imports and would not have a measurable effect on either U.S. consumers or producers.

Marjoram from Peru

There is no data available regarding production of marjoram by the United States or Peru. We are, therefore, unable to determine the effect this proposed rule would have on U.S. producers or consumers of marjoram. We are requesting the public to provide APHIS with any available data regarding production of marjoram in the United States and in Peru.

Eggplant from Spain

The United States produced 36,900 tons of eggplant in 1997 and, in 1999, exported over 12,000 tons and imported 35,669 tons. Imports of eggplant from Spain that could result if this proposed rule is adopted could total 1,000 tons per year, representing 2.8 percent of U.S. imports in 1999 and 2.7 percent of U.S. production in 1997. Therefore, imports of eggplant from Spain are unlikely to have a significant economic effect on U.S. consumers or producers.

Lettuce from Spain

The United States produced 3.4 million tons of lettuce in 1997, and, in 1999, exported over 196,000 tons and imported only 14,000 tons. The peak lettuce growing season in Spain would roughly correspond to U.S. production seasons. Imports of lettuce from Spain that could result if this proposed rule is adopted could total 2,500 tons, representing a 17 percent increase in imports, but only .07 percent of U.S. production in 1997. Therefore, imports of lettuce from Spain that could result if this proposed rule is adopted are unlikely to have a significant economic effect on U.S. consumers or producers.

Watermelon from Spain

The United States produced 2.03 million tons of watermelon in 1997 and imported 240,302 tons of watermelon in 1999. The amount projected to be imported from Spain represents only 1.04 percent of U.S. imports in 1999 and .12 percent of U.S. production in 1997. Therefore, it is unlikely that imports of watermelon from Spain will have a significant economic effect on domestic producers or consumers.

Kiwi from Argentina and Spain

The United States produced 39,400 tons of kiwi in 1997 and, in 1999, imported over 49,000 tons while

exporting 14,792 tons. Data on potential kiwi imports from Argentina are not available. We are requesting the public to provide us with any data related to the potential imports of kiwi from Argentina that could result if this proposal is adopted. Data on potential kiwi imports from Spain are not available, but the amount is expected to be small and should not have a significant economic effect on U.S. consumers or producers.

Passion Fruit from Chile

There is no data available regarding production of passion fruit by the United States or Chile. We are, therefore, unable to determine the effect this proposed rule would have on U.S. producers or consumers of passion fruit. We are requesting the public to provide APHIS with any available data regarding production of passion fruit in the United States and in Chile.

Carambola from Mexico

There is no data available regarding production of carambola by the United States. Mexico's Center for Agricultural Statistics does not believe that there are any commercial carambola production areas in Mexico. Therefore, imports of carambola from Mexico are unlikely to have any measurable economic effect on U.S. producers or consumers.

Papaya from Belize, El Salvador, Guatemala, Honduras, Nicaragua, and Panama

The United States produced 20,500 tons of papaya in 1997 and, in 1999, imported over 73,000 tons and exported 6,533 tons. The top exporters of papaya to the United States were Mexico with 61,619 tons, Belize with 4,188 tons, Jamaica with 2,094 tons, the Dominican Republic with 1,212 tons, and Costa Rica with 771 tons.

If this proposed rule is adopted, we estimate papaya imports of 330 tons from El Salvador, 660 tons from Guatemala, and up to 840 tons from Panama. These volumes of imports are insignificant when compared to domestic production and other papaya imports. Imports of papaya from El Salvador would represent 1.6 percent of U.S. domestic production and less than one-half of 1 percent of U.S. papaya imports. Imports of papaya from Guatemala would represent 3.2 percent of U.S. domestic production and less than 1 percent of U.S. papaya imports. Imports of papaya from Panama would represent 4 percent of domestic production and 1.1 percent of U.S. papaya imports. However, most papayas now grown in Panama are not suitable for export, since they are large, with soft skin. Only four growers are currently planting Solo variety of papayas of exportable quality, and of those, only one has fruit ready to export at this time.

Honduras currently produces 184 tons of papaya and exports 129 tons, but estimates that it could produce and export up to 2,200 tons of papayas (75 percent fresh, 25 percent processed) to the United States if a market for the papayas exists. To export such a volume of papayas to the United States, Honduras would have to increase production by almost 12 times the current level. It is unlikely that such exports would be forthcoming in the foreseeable future, and even if Honduras could export 2,200 tons of papayas to the United States, that amount represents only 3 percent of current papaya imports.

Data on potential imports of papayas from Nicaragua are not available.

Papayas from certain areas in Belize are allowed to be imported into the United States without treatment for Medfly, while papayas from other areas in Belize are required to be treated for Medfly prior to shipment to the United States. This proposed rule would add Belize and Department of Peten, Guatemala, to the list of areas recognized as free of Medfly, thereby eliminating treatment requirements for papaya imported into the United States from any area in Belize or the Department of Peten, Guatemala. However, it is unlikely that this change to the regulations would have a significant effect on the volume of papaya currently exported by Belize or the potential exports by Guatemala that are described above.

U.S. consumers could benefit from expanded choice and potentially lower prices for papaya that could result if the proposed rule is adopted.

Mangoes from Mexico

Currently, mangoes from Mexico are required to be treated for fruit flies prior to importation into the United States. This proposal would add mangoes from certain areas in Mexico to the list of fruits that may be imported into the United States without treatment for fruit flies.

Mexico exported 13,800 tons of mangoes to the United States in 1998 and 11,800 tons in 1999. These exports accounted for 78 and 44 percent of U.S. mango imports for 1998 and 1999, respectively. It is unlikely that removing treatment requirements for mangoes imported from areas listed in § 319.56–2(h) as fruit fly-free areas would measurably reduce the costs of exporting mangoes to the United States or the cost of mangoes in the United States.

Peppers from Israel

In 1999, Israel shipped 15.7 tons of peppers to the United States, accounting for only .046 percent of peppers imported by the United States in that year. Allowing peppers to be shipped through ports other than Tel Aviv is not expected to result in an increase in the volume of peppers exported by Israel and, therefore, would not have any measurable economic effect on U.S. producers or consumers.

Ya Pears from China

China exported 15.7 tons of pears to the United States in 1998 and 749 tons in 1999, representing .056 percent and 1.58 percent of the total U.S. imports of pears for those years, respectively. Data on the percentage or amount of China's exports that were Ya variety pears are not available, and we are unable to determine the additional volume of Ya pears that could be exported to the United States from the Shadong Province of China if this proposed rule is adopted. We have requested information on potential Ya pear exports from China and welcome any data that may be supplied by the public during the comment period for this proposed rule.

Peppers from New Zealand

The United States produced 838,650 tons of peppers in 1997. New Zealand exported 1,600 tons of peppers for the year ending June 1999—a 28 percent increase over the previous year. The United States is potentially a major market for this commodity from New Zealand. However, any imports of peppers from New Zealand would represent a negligible amount of U.S. production and would have an insignificant economic effect on domestic producers and consumers, since New Zealand's exports of 1,600 tons represent less than .2 percent of U.S. production.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables would be preempted while the fruits and vegetables are in foreign commerce.

Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–006–1. Please send a copy of your comments to: (1) Docket No. 00–006–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to allow a number of fruits and vegetables from certain countries of the world to be imported into the United States, under specified conditions. Before entering the United States, all of the fruits and vegetables would be subject to inspection and disinfection at the port of first arrival in the United States to ensure that no plant pests are inadvertently brought into the United States. These precautions, along with other requirements, would ensure that these items can be imported into United States with a minimal risk of introducing exotic plant pests such as fruit flies.

Allowing these fruits and vegetables to be imported will necessitate the use of certain information collection activities, including the completion of import permits, phytosanitary certificates, and fruit fly monitoring records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: U.S. importers of fruits and vegetables; plant health officials of exporting countries.

Estimated annual number of respondents: 150.

Estimated annual number of responses per respondent: 453.

Estimated annual number of responses: 11,400.

Estimated total annual burden on respondents: 3,200 hours.

Copies of this information collection can be obtained from: Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [date], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would be revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. In § 319.56–2, by revising paragraphs (h) and (j) to read as follows.

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(h) The Administrator has determined that the following areas in Mexico meet the criteria of paragraphs (e) and (f) of this section with regard to the plant pests *Ceratitis capitata*, *Anastrepha ludens*, *A. serpentina*, *A. obliqua*, and *A. fraterculus*: The entire State of Baja California Sur; the municipalities of Bachiniva, Casas Grandes, Cuahutemoc, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua; and the municipalities of Altar, Atil, Bacum, Benito Juarez, Caborca, Cajeme, Carbo, Empalme, Etchojoa, Guaymas, Hermosillo, Huatabampo, Navojoa, Pitiquito, Plutarco Elias Calles, Puerto Penasco, San Luis Rio Colorado, San Miguel, and San Ignacio Rio Muerto in the State of Sonora. Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

(j) The Administrator has determined that all Provinces in Chile, all districts in Belize, and the Department of Peten, Guatemala, meet the criteria of § 319.56–2 (e) and (f) with regard to the insect pest Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (Wiedemann). Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for Medfly.

* * * * *

5. In § 319.56–2t, the table would be amended as follows:

a. Under Argentina, by revising the entry for ''Artichoke, globe''.

b. Under Belize, by revising the entry for ''Papaya''.

c. Under Mexico, by placing the entry for ''Arugula'' in alphabetical order.

d. By adding, in alphabetical order, entries for marjoram and oregano from Argentina; cole and mustard crops from Costa Rica and Honduras; papaya from Guatemala; apple, apricot, grapefruit, mango, orange, peach, persimmon, pomegranate, and tangerine from Mexico; peppers from New Zealand; marjoram from Peru; and eggplant and watermelon from Spain.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Artichoke, globe	*Cynara scolymus*	Immature flower head.
* * *	* * *	* * *	
	Marjoram	*Origanum* spp.	Above ground parts.
	Oregano	*Origanum* spp.	Above ground parts.
* * *	* * *	* * *	
Belize.			
* * *	* * *	* * *	
	Papaya	*Carica papaya*	Fruit (from Medfly-free areas see § 319.56-2(j). Fruit must be accompanied by a phytosanitary certificate issued by the Belize department of agriculture stating that the fruit originated in a Medfly-free area listed in § 319.56–2(j).) Papayas are prohibited entry into Hawaii due to papaya fruit fly. Cartons in which fruit is packed must be stamped ''Not for importation into or distribution within HI.''
* * *	* * *	* * *	
Costa Rica.			
* * *	* * *	* * *	
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp.	Whole plant of edible varieties only.
* * *	* * *	* * *	
Guatemala.			
* * *	* * *	* * *	
	Papaya	*Carica papaya*	Fruit (from Medfly-free areas see § 319.56-2(j). Fruit must be accompanied by a phytosanitary certificate issued by the Guatemalan department of agriculture stating that the fruit originated in a Medfly-free area listed in § 319.56–2(j).) Papayas are prohibited entry into Hawaii due to papaya fruit fly. Cartons in which fruit is packed must be stamped ''Not for importation into or distribution within HI.''
* * *	* * *	* * *	
Honduras.			
* * *	* * *	* * *	
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp.	Whole plant of edible varieties only.
* * *	* * *	* * *	
Mexico.			

Country/locality	Common name	Botanical name	Plant part(s)
* * *	* * *	* * *	
	Apple	*Malus domestica*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
	Apricot	*Prunus armeniaca*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
* * *	* * *	* * *	
	Grapefruit	*Citrus paradisi*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
* * *	* * *	* * *	
	Mango	*Mangifera indica*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
	Orange	*Citrus sinensis*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
	Peach	*Prunus persica*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
	Persimmon	*Diospyros* spp.	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')

Country/locality	Common name	Botanical name	Plant part(s)
* * * * * * *			
	Pomegranate	*Punica granatum*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
* * * * * * *			
	Tangerine	*Citrus reticulata*	Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These regulated articles originated from an area free from pests as designated in § 319.56–2(h).'')
* * * * * * *			
Peru.			
* * * * * * *			
	Marjoram	*Origanum* spp.	Above ground parts.
* * * * * * *			
Spain	Eggplant	*Solanum melongena*	Fruit, commercial shipments only.
* * * * * * *			
	Watermelon	*Citrullus vulgaris*	Fruit, commercial shipments only.
* * * * * * *			

* * * * *

6. In § 319.56–2u, paragraph (b)(7) would be revised to read as follows and paragraph (b)(8) would be removed:

§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.

* * * * *

(b) * * *

(7) The peppers must be packed in insect-proof containers prior to movement from approved insect-proof screenhouses in the Arava Valley.

7. Section 319.56–2w would be amended by revising the heading, the introductory text, and paragraph (a) to read as follows:

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Central America and Brazil.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in one of the following locations:

(1) Brazil: State of Espirito Santo.

(2) Costa Rica: Provinces of Guanacaste, Puntarenas, San Jose.

(3) El Salvador: Departments of La Libertad, La Paz, and San Vicente.

(4) Guatemala: Departments of Escuintla, Retalhuleu, Santa Rosa, and Suchitepequez.

(5) Honduras: Departments of Comayagua, Cortes, and Santa Barbara.

(6) Nicaragua: Departments of Carazo, Granada, Managua, Masaya, and Rivas.

(7) Panama: Provinces of Cocle, Herrera, and Los Santos; Districts of Aleanje, David, and Dolega in the Province of Chiriqui and all areas in the Province of Panama that are west of the Panama Canal.

* * * * *

8. In § 319.56–2x, the table would be amended as follows:

a. By removing the entry for Belize.

b. By adding, in alphabetical order, entries for kiwi from Argentina, passion fruit from Chile, and carambola from Mexico.

c. Under Mexico, by revising the entry for ''mango''.

d. By adding a new entry for Spain.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina.			
* * * * * * *			
	Kiwi	*Actinidia deliciosa*	Fruit.
* * * * * * *			
Chile.			

Country/locality	Common name	Botanical name	Plant part(s)
* *	* *	* *	* *
	Passion fruit	*Passiflora* spp.	Fruit.
* *	* *	* *	* *
Mexico	Carambola	*Averrhoa carambola*	Fruit.
* *	* *	* *	* *
	Mango	*Mangifera indica*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: ''These mangoes were treated in accordance with the Plant Protection and Quarantine Treatment Manual'', unless fruit was grown in a fruit fly-free area listed in § 319.56–2(h).)
* *	* *	* *	* *
Spain	Kiwi	*Actinidia deliciosa*	Fruit.
	Lettuce	*Lactuca* spp.	Above ground parts, commercial shipments only.
* *	* *	* *	* *

* * * * *

§ 319.56–2ee [Amended]

9. In § 319.56–2ee, paragraph (a) would be amended by removing the words ''Hebei Province'' and inserting in their place the words ''the Hebei or Shadong Provinces''.

10. A new § 319.56–2hh would be added to read as follows:

§ 319.56–2hh Conditions governing the entry of peppers from New Zealand.

(a) Peppers from New Zealand may be imported into the United States only under the following conditions:

(1) Peppers must be grown in New Zealand in insect-proof greenhouses approved by the New Zealand Ministry of Agriculture and Forestry (MAF).

(2) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(3) The greenhouses must be examined periodically by MAF to ensure that the screens are intact.

(4) Each shipment of peppers must be accompanied by a phytosanitary certificate of inspection issued by the Ministry of Agriculture and Forestry of New Zealand bearing the following declaration: ''These peppers were grown in greenhouses in accordance with the conditions in § 319.56–2hh.''

Done in Washington, DC, this 15th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21174 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Docket No. FV–00–1216PR]

Peanut Promotion, Research, and Information Order; Reopening of Comment Period on Amendment No. 1 to Add a Public Member to the National Peanut Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed rule to amend the Peanut Promotion, Research, and Information Order is reopened until September 20, 2000. The proposed rule would add a public member and alternate to the National Peanut Board (Board), add authority for producers in minor peanut-producing states to conduct nominations for Board members by mail ballot, make changes related to the addition of the public member, and eliminate obsolete language. The comment period is being reopened at the request of several peanut industry groups and representatives.

DATES: Comments must be received by September 20, 2000.

ADDRESSES: Interested persons are invited to submit written comments, in triplicate, concerning the proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Washington, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; via facsimile to (202) 205–2800; or via e-mail to malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection at the above address during regular business hours or on the Internet at *www.ams.usda.gov/fv/rpb.html.* A copy of the proposed rule may be found at *www.ams.usda.gov/fv/rpdocketlist.htm.*

Pursuant to the Paperwork Reduction Act of 1995 (PRA), you may also send comments regarding the accuracy of the burden estimate in the proposed rule, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of the collection of information in the proposed rule, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and

Promotion Branch, FV, AMS, USDA, Room 2535–S, Stop 0244, Washington, DC 20250–0244; telephone (888) 720–9917 (toll free); or facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on May 26, 2000, and published in the **Federal Register** [65 FR 35298, June 2, 2000]. The proposed rule invited comments on adding a public member to the National Peanut Board (Board), allowing producers in minor peanut-producing states to conduct nominations by mail ballot, making changes related to the addition of the public member, and eliminating obsolete language. The Board is currently composed of 10 peanut producers and their alternates as required by the Peanut Promotion, Research, and Information (Order). The proposed rule specified that comments must be received by August 1, 2000.

The U.S. Department of Agriculture (USDA) received requests from seven peanut producer organizations, and five Members of Congress to extend the comment period for 60 days. The organizations stated that the peanut industry is in the middle of the growing season and needs time to organize grower meetings in order to give their members the opportunity to discuss the positives and negatives of adding a public member to the Board. The congressional comments supported the organizations' request for an additional 60 days to submit comments. In addition, the Board submitted a comment on the proposed rule.

USDA also is concerned about the peanut industry and other interested persons having adequate time to review the proposed rule. Taking into account the requests received for additional time to comment, it is USDA's view that reopening the comment period for 30 days will allow peanut producers, producer organizations, and other interested persons adequate time to develop comments on the proposed rule and submit them. Further, the original comment period was for 60 days. The additional 30 days provides the industry a total of 90 days to comment on the proposal.

Accordingly, the period in which to file written comments is reopened until September 20, 2000.

Authority: 7 U.S.C. 7401–7425.

Dated: August 15, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–21217 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 00–005–2]

Animal Welfare; Definitions for and Reporting of Pain and Distress

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our request for comments concerning several changes we are considering making to the Animal Welfare regulations to promote the humane treatment of live animals used in research, testing, and teaching and to improve the quality of information we report to Congress concerning animal pain and distress. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 00–005–1. We will consider all comments that we receive by November 7, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–005–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–005–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Jodie Kulpa, Staff Veterinarian, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2000, we published in the **Federal Register** (65 FR 42304–42305, Docket No. 00–005–1) a request for comments on several changes we are considering making to the Animal Welfare regulations to promote the humane treatment of live animals used in research, testing, and teaching and to improve the quality of information we report to Congress concerning animal pain and distress. Specifically, we are considering adding a definition for the term ''distress'' and replacing or modifying the system we use to classify animal pain and distress.

Comments in response to our request for comments were required to be received on or before September 8, 2000. In response to requests from the public, we are extending the comment period on Docket No. 00–005–1 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 15th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21173 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers Model R381/6–123–F/5 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers Model R381/6–123–F/5 propellers. That action currently requires initial and repetitive visual and ultrasonic inspections of propeller blades for cracks across the camber face, and, if blades are found cracked, replacement with serviceable blades. This proposed revision would increase the time-in-service (TIS) intervals between required visual and ultrasonic inspections. This proposal is prompted by an engineering analysis of

field service data and certification testing that indicate that the repetitive inspection interval can be safely increased. The actions specified in this proposed revision are intended to prevent propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control.

DATES: Comments must be received by September 20, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL29QN, England; telephone: 44 1452 716000, fax: 44 1452 716001. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted 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–NE–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 25, 1999, the FAA issued 99–NE–43–AD, Amendment 39–11284, (64 FR 47661, September 1, 1999), applicable to Dowty Aerospace Propellers Model R381/6–123–F/5 propellers to require initial and repetitive visual and ultrasonic inspections of propeller blades for cracks across the camber face, and, if blades are found cracked, replacement with serviceable blades. That action was prompted by a report of a crack that had developed on a deiced propeller blade assembly across the camber face at a blade station of approximately 13.5″ up from the base of the blade cuff. That condition, if not corrected, could result in propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control. The FAA received no comments to the current AD, issued as a final rule, request for comments.

Since that AD was issued an engineering analysis of field service data and certification testing indicate that the repetitive inspection interval can be safely increased. As a result, the manufacturer has revised Dowty Service Bulletin No. S2000–61–75 (Rev. 3, dated September 30, 1999), to increase the repetitive visual inspection interval from 50 to 300 hours time in service (TIS) since last inspection and repetitive visual and ultrasonic inspections of propeller blades for cracks from 200 to 600 hours TIS.

Since an unsafe condition has been identified that is likely to exist or develop on other Dowty Aerospace Propellers Model R381/6–123–F/5 propellers of the same type design, the proposed AD would revise AD 99–18–18 to increase the TIS intervals between required visual and ultrasonic inspections.

Regulatory Impact

The proposed revision would not increase the economic burden on US operators as set out in the economic analysis published for the current AD.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11284 (64 FR 47661, September 1, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Dowty Aerospace Propellers: Docket 99–NE–43–AD. Revises AD 99–18–18, Amendment 39–11284.

Applicability: Dowty Aerospace Propellers Model R381/6–123–F/5 propellers, installed on but not limited to SAAB 2000 series airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller 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 propellers 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 propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control, accomplish the following:

Visual Inspections

(a) Perform initial and repetitive visual inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers Service Bulletin (SB) No. S2000–61–75, Revision 3, dated September 30, 1999, as follows:

(1) Initially, conduct a visual inspection within 50 hours time-in-service (TIS) after the effective date of the original AD.

(2) Thereafter, inspect at intervals not to exceed 300 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

Ultrasonic Inspections

(b) Perform initial and repetitive ultrasonic inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers SB No. S2000–61–75, Revision 3, dated September 30, 1999, as follows:

(1) Initially inspect within 200 hours TIS after the effective date of the original AD.

(2) Thereafter, inspect at intervals not to exceed 600 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

Alternative Method 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, Boston Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston 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 aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 14, 2000.

David A. Downey,

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

[FR Doc. 00–21167 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–2000–7479; Notice No. 00–05]

RIN 2120–AG96

Certification of Airports; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document makes corrections to the proposed rule published in the **Federal Register** on June 21, 2000 (65 FR 38639), which proposes to revise the current airport certification regulation and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with 10–30 seats.

FOR FURTHER INFORMATION CONTACT: Linda Bruce, 202–267–8553, or E-mail: linda.bruce@faa.gov.

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc. 00–14524, published on June 21, 2000 (65 FR 38636), make the following corrections:

1. On page 38654, in the second column, fifth full paragraph, line one, correct ''Similar to proposed § 139.317(1)'' to read ''Similar to proposed § 139.317(k).''

2. On page 38673, in the second column, correct § 139.111 by revising paragraphs (s),(b), and (c) to read as follows:

§ 139.111 Exemptions.

(a) An applicant or a certificate holder may petition the Administrator under 14 CFR 11, General Rulemaking Procedures, of this chapter for an exemption from any requirement of this part.

(b) Under 49 U.S.C. 44706(c), the Administrator may exempt an applicant or a certificate holder that enplanes annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports from all, or part, of the aircraft rescue and firefighting equipment requirements of this part, on the grounds that compliance with those requirements is, or would be, unreasonably costly, burdensome, or impractical. An applicant for, or holder of, an airport operating certificate filing for such an exemption shall use the format prescribed under § 139.321.

(c) Each petition filed under section must be submitted in duplicate to the—

(1) Regional Airports Division Manager; and

(2) U.S. Department of Transportation's Docket Management System, per 14 CFR 11.

3. On page 38677, in the first and second columns correct § 139.137 by removing paragraph (f); and by redesignating paragraphs (g) through (1) as (f) through (k); and by revising newly designated paragraph (f)(3) to read as follows:

§ 139.317 Aircraft rescue and firefighting: Equipment and agents.

* * * * *

(f) * * *

(3) Notwithstanding the requirements of paragraph (f) of this section, any certificate holder whose aircraft rescue and firefighting vehicles are not equipped with turrets or do not have the discharge capacity required in this section, but otherwise met the requirements of this part on December 31, 1987, need not comply with paragraph (f) of this section for a particular vehicle until that vehicle is replaced or rehabilitated.

* * * * *

Issued in Washington, DC on August 14, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 00–20947 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA078–01–7211a; A–1–FRL–6854–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revisions to Stage II Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This submittal contains a revised Stage II vapor recovery regulation. The intended effect of this action is to propose approval of Massachusetts' revised

Stage II rule. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 20, 2000. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Business Compliance Division, Bureau of Waste Prevention, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking?
What are the CAA requirements for Stage II programs?
What revisions did Massachusetts make to its Stage II rule?
Why is EPA approving Massachusetts' revised Stage II rule?
What is the process for EPA's approval of this SIP revision?

What Action is EPA Taking?

EPA is proposing to approve Massachusetts' revised 310 CMR 7.24(6) ''Dispensing of Vehicle Fuel'' and incorporate this rule into the Massachusetts SIP. The revised rule was proposed by the Massachusetts Department of Environmental Protection (DEP) in January 2000 and was submitted to EPA for parallel processing on August 9, 2000.

What Are the CAA Requirements for Stage II Programs?

Section 182(b)(3) of the Clean Air Act (as modified by EPA's rulemaking under section 202(a)(6)) requires that States with serious or above ozone nonattainment areas adopt Stage II vapor recovery rules for gasoline dispensing facilities. In addition, section 184(b)(2) of the Clean Air Act (CAA) requires that states in the Ozone Transport Region adopt Stage II or comparable measures. EPA approved an early version of Massachusetts' Stage II rule 310 CMR 7.24(6) as strengthening the SIP. See 57 FR 58993 (December 14, 1992). EPA later approved a revised version of 310 CMR 7.24(6) as meeting the requirements of section 182(b)(3) and section 184(b)(2) of the CAA. See 58 FR 48315 (September 15, 1993).

What Revisions Did Massachusetts Make to its Stage II Rule?

In order to justify the level of emission reductions claimed in its SIP, Massachusetts is currently adding the following new provisions to its Stage II rule: (1) A provision explicitly requiring the installation of CARB (California Air Resources Board) approved Stage II systems; (2) a provision requiring annual Stage II system compliance testing and certification; and (3) a provision explicitly requiring weekly visual inspections of the Stage II system components. In addition, a provision addressing the direct refueling of a motor vehicle from a tank truck is included in Massachusetts' revised Stage II rule. This provision was adopted by DEP and submitted to EPA as a SIP revision in 1995 but has not yet been approved into the Massachusetts SIP. Each of the four new provisions is discussed below in more detail.

(1) Installation of CARB Approved Stage II Systems

The version of 310 CMR 7.24(6) which is currently in the SIP requires that subject facilities install and operate a vapor collection and control system that recovers at least 95 percent of the vapors generated during the refueling of a motor vehicle. Although this version of the rule does not explicitly reference CARB approved Stage II systems, requiring CARB approved systems is the method used by the DEP to implement the 95 percent control requirement. See 57 FR 58993 (December 14, 1992). The revised rule submitted on August 9, 2000 explicitly requires CARB approved Stage II systems. In addition, revised 310 CMR 7.24(6)(g) contains a list of the DEP approved CARB Stage II Executive Orders. Also, the revised rule states that facilities must comply with the conditions of any new or modified Executive Order upon DEP revision to 310 CMR 7.24(6)(g) to incorporate such new or modified Executive Order. When the DEP revises the 310 CMR 7.24(6)(g) listing of Executive Orders, the DEP will need to submit those revisions to EPA in order for those new orders to be compliance methods under the federal SIP.

(2) Annual Stage II System Compliance Testing and Certification

The revised rule requires installation testing and compliance certification, as well as annual in-use compliance testing and certification, for all Stage II systems. The revised rule also requires 120 day in-use compliance testing and certification for vacuum assist systems. In addition, the revised rule allows facilities the choice of submitting an alternative annual in-use compliance certification if the facility has passed its tests on the first try for two consecutive years. In this case, an annual certification attesting that the system is correctly operated and maintained is required but compliance tests may be conducted on an every other year schedule. The specific compliance tests to be conducted are outlined in the table below.

STAGE II SYSTEM COMPLIANCE TESTING

	Vapor balance system	Vacuum assist system
Installation	Pressure Decay Test and Dynamic Pressure/Liquid Blockage Test.	Pressure Decay Test; Dynamic Pressure/Liquid Blockage Test; and Air-to-Liquid Ratio Test.
120-day in-use	Not applicable	Pressure Decay Test and Air-to-Liquid Ratio Test.
Annual in-use	Pressure Decay Test annually and Dynamic Pressure/Liquid Blockage Test every third year.	Pressure Decay Test and Air-to-Liquid Ratio test annually and Dynamic Pressure/Liquid Blockage Test every third year.
Alternative Annual in-use	Pressure Decay Test and Dynamic Pressure/Liquid Blockage Test.	Pressure Decay Test; Dynamic Pressure/Liquid Blockage Test; and Air-to-Liquid Ratio Test.

Furthermore, the revised rule also includes requirements regarding the Stage II compliance testing company. On or after November 15, 2000, any person who owns, leases, operates or controls a company that performs Stage II compliance tests must submit to the DEP a Stage II compliance testing company notification prior to performing any Stage II compliance tests. The revised rule requires that the testing company submit, at least once every two weeks, a written list to the DEP identifying the dates and addresses of scheduled tests to be performed over the next 14 day period. The revised rule also requires that persons conducting the tests be trained in accordance with the applicable testing protocols and procedures. In addition, the revised rule cites the specific CARB test procedures to be followed. The testing company must certify that each compliance test performed was conducted in accordance with these test procedures and must maintain records of compliance test results for a minimum of five years.

(3) Weekly Visual Inspections of the Stage II System Components

The version of 310 CMR 7.24(6) that is currently in the SIP contains several provisions regarding maintenance of the Stage II system. Specifically, the rule requires that the system be maintained such that it recovers at least 95 percent by weight of the vapors displaced during the dispensing of motor vehicle fuel and requires ''Out of Order'' signs to be placed on above ground parts of the Stage II system which are not fully operative until the system has been repaired. In addition, the rule requires that records of any failure or malfunction of the system, as well as records of any maintenance performed, be kept. The revised rule submitted on August 9, 2000 includes similar provisions but also explicitly requires weekly visual inspections of a specific list of Stage II system components to be conducted by a person who is trained to operate and maintain the system in accordance with the conditions of the applicable CARB Executive Order. In addition, the revised rule requires that malfunctioning equipment that has been taken out of service be repaired or replaced within 14 days.

(4) Direct Refueling of a Motor Vehicle From a Tank Truck

The revised rule requires that a tank truck engaged in the direct dispensing of motor vehicle fuel to a motor vehicle or a portable container install a CARB approved Stage II system. Tank trucks dispensing motor vehicle fuel to emergency motor vehicles or portable containers during fire fighting activities or a declared emergency situation are exempt from this requirement. This provision was adopted by DEP and submitted to EPA as a SIP revision in 1995 but has not yet been approved into the Massachusetts SIP.

Why is EPA Approving Massachusetts' Revised Stage II Rule?

EPA is approving Massachusetts' revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. Previously, the resources DEP devoted to Stage II enforcement and the wording of the existing rule called into question the Stage II reductions assumed in the Massachusetts SIP. In its attainment demonstration SIP submittal, DEP committed to submit a revised Stage II rule. EPA's proposed rulemaking on the western Massachusetts attainment demonstration noted that the Stage II SIP submittal was one of two outstanding SIP elements that must be approved into the Massachusetts SIP in order for EPA to be able to fully approve the western Massachusetts attainment demonstration. See 64 FR 70319 (December 16, 1999). With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

What is the Process for EPA's Approval of This SIP Revision?

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Furthermore, EPA's proposal is based on the submittal received by EPA on August 9, 2000 that contains Massachusetts' preliminary final amendments to its Stage II rule. DEP must submit to EPA the final adopted version of this rule before EPA can take final action. This administrative procedure, known as ''parallel processing,'' is permitted under EPA's rules for processing SIPs in Appendix V to 40 CFR part 51.

Proposed Action

EPA is proposing to approve Massachusetts' revised 310 CMR 7.24(6) ''Dispensing of Motor Vehicle Fuel'' and incorporate this rule into the Massachusetts SIP.

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

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, 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. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the Clean Air Act.

Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

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

Dated: August 11, 2000.

Mindy Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–21196 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–6855–3]

RIN 2060–AI90

National Emission Standards for Hazardous Air Pollutants; Standard for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; Standard for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; reopening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA), Office of Radiation and Indoor Air, Radiation Protection Division, Center for Waste Management is extending the comment period on the proposed rule to amend 40 CFR part 61, subpart H as it applies to operations at any facility owned or operated by the Department of Energy (DOE) that emits any radionuclide other than radon-222 and radon-220 into the air and subpart I as it applies to non-DOE federal facilities in the radionuclide National Emission Standards Hazardous Air Pollutants (NESHAPs) (65 FR 29934, May 9, 2000). A public hearing was held on Wednesday, July 12, 2000, from 9:00 am to 12:00 pm. The comment period for this hearing was to end on August 14, 2000. This comment period is extended to October 6, 2000.

DATES: EPA will continue to accept public comments on this proposed rule until October 6, 2000.

ADDRESSES: Comments must be submitted, in duplicate, to: Central Docket (6102), Attn: Docket No. A–94–60, U.S. Environmental Protection Agency, 401 M Street, SW, Room M1500, Washington, DC 20460. The docket is available for public inspection between the hours of 8:00 am and 5:00 pm, Monday thru Friday, in Room M1500 of Waterside Mall at the above address. A reasonable fee may charged for copying.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton-Jones, Center for Waste Management, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Mailstop 6608J, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email: *thornton.eleanord@epa.gov* or by phone (202) 564–9773. Comments can also be faxed to Ms. Thornton-Jones at (202) 565–2065.

SUPPLEMENTARY INFORMATION

On May 9, 2000 (65 FR 29934) EPA proposed to amend 40 CFR part 61, subpart H (subpart H) as it applies to operations at any facility owned or operated by the Department of Energy (DOE) that emits any radionuclide other than radon-222 and radon-220 into the air and subpart I as it applies to non-DOE federal facilities in the radionuclide National Emission Standards Hazardous Air Pollutants (NESHAPs). Subparts H and I require emission sampling, monitoring and calculations to identify compliance with the standard. To sample and monitor these radionuclide air emissions, subpart H in § 61.93(b)(2)(ii), and subpart I in § 61.107(b)(2)(ii), both require radionuclide emissions from point sources to be measured in accordance with the guidance presented in the American National Standard Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities, ANSI N13.1–1969. In 1999, this ANSI standard was revised and replaced by the new ANSI N13.1–1999 standard, entitled ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities.'' This proposed amendment was to amend subpart H and subpart I to incorporate the new ANSI N13.1–1999 standard.

On July 12, 2000, a public hearing was held on the proposed rule to amend 40 CFR part 61, subpart H and subpart I. At the time of the hearing, EPA verbally gave an extension for the public to submit comments until August 14, 2000. EPA received a request to extend the comment period from August 14 to August 21, 2000 from the ANSI N13.1 NESHAPS Comment Group. After considering this request, EPA has decided to extend the comment period an additional 45 days for this proposal. Comments should be submitted on or before October 6, 2000.

Dated: August 15, 2000.

Mary T. Smith,

Acting Director, Office of Radiation and Indoor Air, Air and Radiation.

[FR Doc. 00–21198 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF97

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis on Proposed Critical Habitat Determination for the San Diego Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of a draft economic analysis for the proposed designation of critical habitat for the San Diego fairy shrimp (*Branchinecta sandiegonensis*). We also provide notice of the reopening of the comment period for the proposal to allow all interested parties to submit written comments on the proposal and on the draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public records as a part of this reopening and will be fully considered in the final rule.

DATES: The original comment period on the critical habitat proposal closed on May 8, 2000. The comment period is again reopened and we will accept

comments until September 11, 2000. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at ''http://pacific.fws.gov/crithab/sdfs'' or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Written comments should be sent to the Field Supervisor. You may also send comments by electronic mail (e-mail) to *fwlsdfs@fws.gov*. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: RIN 1018–AF97'' and your name and return address in your e-mail message. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: The Carlsbad Fish and Wildlife Office, at the above address (telephone 760–431–9440; facsimile 760–431–9440).

SUPPLEMENTARY INFORMATION:

Background

The San Diego fairy shrimp is a small aquatic crustacean restricted to vernal pools (pools that have water in them for only a portion of a given year) in coastal southern California and south to northwestern Baja California, Mexico. It is found in small shallow vernal pools and ephemeral (lasting a short time) basins that range in depth from approximately 5 to 30 centimeters (2 to 12) inches (Simovich and Fugate 1992; Hathaway and Simovich 1996). Mature individuals lack a carapace (hard outer covering of the head and thorax) and have a delicate elongate body, large stalked compound eyes, and 11 pairs of swimming legs. They swim or glide upside down by means of complex wave-like beating movements of the legs and pass from front to back. Adult male San Diego fairy shrimp range in size from 9 to 16 millimeters (mm) (0.35 to 0.63 inches (in.)), adult females are 3 to 14 mm (0.31 to 0.55 in.) long. Vernal pools are found in various areas in California. They are found in regions with Mediterranean climates, where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland and Jain 1997, 1998; Thorne 1984; Zedler 1987; Simovich; and Hathaway 1997). Urban and water development, flood control, highway and utility projects, as well as conversion of wildlands to agricultural use, have eliminated vernal pools and/or their watersheds in southern California (Jones and Stokes Associates 1987). Also threatening the San Diego fairy shrimp are changes in the hydrologic pattern, overgrazing, and off-road vehicle use.

On March 8, 2000, the Fish and Wildlife Service published a rule proposing critical habitat for the San Diego fairy shrimp *Branchinecta sandiegonensis* in the **Federal Register** (65 FR 12181), a species Federally listed as endangered throughout its range. We proposed the designation of approximately 36,000 acres of critical habitat for the San Diego fairy shrimp pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed critical habitat is in Orange and San Diego counties, California, as described in the proposed rule.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the San Diego fairy shrimp and comments received during previous comment periods, we have conducted a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address (see **ADDRESSES**). In order to accept the best and most current scientific data regarding the critical habitat proposal and the draft economic analysis of the proposal, we reopen the comment period at this time. Previously submitted oral or written comments on this critical habitat proposal need not be resubmitted. The current comment period on this proposal closes on September 15, 2000. Written comments may be submitted tot he Service office in the **ADDRESSES** section.

Author

The primary author of this notice is the Carisbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 16, 2000.

Don Weathers,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–21308 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 162
Monday, August 21, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting Regarding the Proposed World War II Memorial on the National Mall

AGENCY: Advisory Council on Historic Preservation.

ACTION: Announcement of meeting.

SUMMARY: A panel of members from the Advisory Council on Historic Preservation will hold a meeting to consider the formal comments it will provide regarding the adverse effects that the proposed World War II Memorial will have on the historic qualities of West Potomac Park, a property listed on the National Register of Historic Places. The resulting formal comments will be submitted to the Secretary of the Interior, pursuant to Section 106 of the National Historic Preservation Act.

DATES: The meeting date is August 28, 2000, starting at 1 p.m.

ADDRESSES: The meeting will take place at the Department of the Interior Auditorium, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Martha Catlin, 202–606–8503.

SUPPLEMENTARY INFORMATION: In its review pursuant to Section 106 of the National Historic Preservation Act, the National Park Service has determined that the construction of the World War II Memorial on the National Mall will adversely affect the historic qualities of West Potomac Park, a property listed on the National Register of Historic Places. The Chairman of the Advisory Council on Historic Preservation (Council) has determined that further consultation regarding this project will not be productive, and that the Council will therefore proceed with formal comments. As part of its deliberations in formulating such comments, a panel of Council members will meet as noted above. The Council members comprising the panel will be: Cathryn Buford Slater (Chairman of the Council), Stephen Hand (Vice Chairman of the Council), Bruce D. Judd (expert member), and Paul W. Fiddick (designee of the Department of Agriculture).

This meeting is open to the public. The panel will consider both written and oral statements from the public. Written statements should be submitted, on or before August 24, 2000, to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Suite 809, Washington, DC 20004. Persons wishing to make oral statements at the meeting should notify Martha Catlin, on or before August 24, 2000, at 202–606–8503.

If you need accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503.

Established by the National Historic Preservation Act (NHPA), the Advisory Council on Historic Preservation is an independent Federal agency that provides a forum for influencing Federal activities, programs, and policies as they affect historic resources. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council a reasonable opportunity to comment on such undertakings.

(Authority: 36 CFR 800.7)

Dated: August 15, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–21159 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–10–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0011.

Form Number: AID 1010–2.

Title: Application for Assistance—American Schools and Hospitals Abroad.

Type of Submission: Renewal.

Purpose: USAID finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grants program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aid in such determination, the office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the **Federal Register,** Doc. 79–36221.

Annual Reporting Burden:

Respondents: 85.

Total annual responses: 85.

Total annual hours requested: 1,020 hours.

Dated: August 8, 2000.

Joanne Paskar,

Chief, Information and Records Division Office of Administrative Services Bureau of Management.

[FR Doc. 00–21208 Filed 8–18–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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: U.S. Census Bureau.

Title: Shipper's Export Declaration (SED) Program.

Form Number(s): 7525–V, Automated Export System (AES).

Agency Approval Number: 0607–0152.

Type of Request: Revision of a currently approved collection.

Burden: 1,284,949 hours.

Number of Respondents: 200,000.

Avg. Hours Per Response: 7572–V=11 minutes; AES=3 minutes.

Needs and Uses: The Census Bureau requests OMB clearance of the paper and electronic forms it uses in the Shipper's Export Declaration (SED) Program. We are requesting clearance only for the Form 7525–V, ''Shipper's Export Declaration'' and the Automated Export System (AES). Sponsorship of Form 7513, ''Shipper's Export Declaration (SED) for In-Transit Goods'' is being transferred to the U.S. Army Corps of Engineers and they will be submitting a clearance request for that form. The Automated Export Reporting Program (AERP) was terminated in December of 1999 and users of that system are currently reporting through the AES or the paper SED. We are also eliminating the Form 7525–V–Alternate (Intermodal) as a shipper's export reporting document.

Further, we are proposing changes to Form 7525–V that will primarily serve to: (1) Delete unused or outdated data fields; (2) update the forms with current Federal Government agency names; (3) make the data elements on the paper SED consistent with the data elements on the AES record; and (4) make revisions consistent with the provisions of the Census Bureau's final rule on Exporter (U.S. Principal Party In Interest (USPPI)) and Forwarding or other Agent responsibilities in preparing the SED or AES record.

The Census Bureau has determined that making the changes described above to the Form 7525–V–Alternate (Intermodal) would result in making that Form incompatible with the ocean bill of lading, with which it was intended to align, thereby negating its utility to the vessel exporting community. A Form 7525–V or electronic AES record may be completed in its place.

The Census Bureau will allow the trade community a grace period of 180 days (April 1, 2001) to deplete their stock of current SED forms. The Census Bureau encourages the trade community to begin using the revised Form 7525–V as of October 1, 2000. However, during the grace period the Census Bureau will allow use of both the old and revised Form 7525–V and Form 7525–V–Alternate (Intermodal). As of April 1, 2001, only Form 7525–V and the AES will be accepted by the U.S. Customs Service and the Census Bureau as a means of reporting shipper's export declaration information.

The Foreign Trade Division (FTD), Census Bureau, is also intending to facilitate the submission of SED information by providing the trade community with a software package, free of charge, that will allow the trade community to input SED information and submit it electronically through AESDirect. The Census Bureau will inform the trade community through the FTD website and AES newsletter, as to when this software will be available. The Census Bureau will also inform the trade community of the grace period through periodic updates on the FTD website.

The SED form and the AES electronic equivalent are the means by which the Census Bureau collects and compiles U.S. trade statistics. The official export statistics provide a basic component for the compilation of the U.S. position on merchandise trade. These data are an essential component of the monthly totals on International U.S. Trade in Goods and Services, a leading economic indicator and primary component of the Gross Domestic Product (GDP).

Form 7525–V and the AES record also provide information for export control purposes. This information is used to detect and prevent the export of certain commodities (for example, high technology or military) to unauthorized destinations or end users.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Chapter 9, Sections 301–307; Title 15, CFR, Part 30 ''Foreign Trade Statistics Regulations.''

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 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 Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–21144 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Exception to Reporting Requirement under the IC/DV Procedure Report of Sample Shipments of Chemical Weapon Precursors.

Agency Form Number: None.

OMB Approval Number: 0694–0001.

Type of Request: Extension of a currently approved collection of information.

Burden: 11 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 21 respondents.

Needs and Uses: This reporting requirement allows exporters to request an exception to the imports certificate (or its equivalent) procedure. This reporting requirement also covers requests for exceptions to the delivery verification procedure.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

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 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 15, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–21243 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Application for a Duplicate License.

Agency Form Number: None.

OMB Approval Number: 0694–0031.

Type of Request: Extension of a currently approved collection of information.

Burden: 27 hours.

Average Time Per Response: 15 minutes per response.

Number of Respondents: 100 respondents.

Needs and Uses: This collection of information is necessary to identify original export licenses of respondents who request duplicate export licenses for lost or destroyed licenses.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

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 6086, 14th Street and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 15, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–21244 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–838]

Notice of Amendment to the Agreement Between the United States Department of Commerce and the Government of the People's Republic of China Suspending the Antidumping Investigation on Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce and the Government of the People's Republic of China have signed an Amendment to the Agreement Suspending the Antidumping Investigation on Honey from China

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Becky Hagen or James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3362 (Hagen) and (202) 482–0159 (Doyle).

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2000, the Department of Commerce (''Department'') and the Government of the People's Republic of China (''PRC'') initialed an Amendment to provide for the continuation of exports of honey from the PRC to the United States until August 1, 2001. The Department subsequently released the Amendment to interested parties for comment. No interested party filed comments and therefore the Department and the Government of the PRC signed a final Amendment on July 31, 2000. The text of the final Amendment follows this notice.

Dated: August 10, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Amendment to the Antidumping Suspension Agreement on Honey Between the United States Department of Commerce and the Government of the People's Republic of China

The United States Department of Commerce (Department) and the Government of the People's Republic of China (PRC) hereby amend Section XII of the Agreement Suspending the Antidumping Investigation on Honey from the People's Republic of China, signed August 2, 1995, as amended, by adding the following language immediately after the first sentence of Section XII:

In order to provide for the continuation of exports of honey from the PRC to the United States during and immediately following the Department's administrative review pursuant to section 751(a) of the Act and the five-year review by the Department and the International Trade Commission pursuant to section 751(c) of the Act, the export limits provided for in Section III of this Agreement, as amended, shall remain in force through August 1, 2001.

If, after said date, the underlying proceeding remains suspended, the Government of the PRC and the Department will enter into consultations to agree upon export limits in order to permit future shipments under the Agreement. If, prior to said date, the underlying proceeding is terminated as a result of either the termination review or the sunset review, the Agreement, this Amendment and the export limits contained therein will be terminated.

Dated: July 31, 2000.

Richard W. Moreland,

For the United States Department of Commerce.

Dated July 31, 2000.

Shi Jianzin,

For the Ministry of Foreign Trade and Economic Cooperation, PRC.

[FR Doc. 00–21242 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–801]

Notice of Postponement of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From the Philippines

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James at (202) 482-2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue., NW., Washington, DC 20230.

Postponement of Final Determination

The Department of Commerce is postponing the final determination in the antidumping duty investigation of stainless steel butt-weld pipe fittings from the Philippines.

On August 2, 2000 the Department published its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from the Philippines,* 65 FR 47393 (August 2, 2000). The notice stated that the Department would issue its final determination no later than 75 days after the date of issuance of the notice.

Pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended, on July 31, 2000, Tung Fong Industrial Co., Ltd. (Tung Fong), a respondent in the investigation, requested that the Department postpone its final determination to the fullest extent permitted by the statute and the Department's regulations. In addition, it consented to an extension of the period for the imposition of provisional measures to the fullest extent permitted, or six months, whichever is later. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b), because (1) the preliminary determination was affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting Tung Fong's request and are postponing the final determination until no later than 135 days after publication of the preliminary determination in the **Federal Register** (*i.e.,* until no later than December 15, 2000). Suspension of liquidation will be extended accordingly.

This postponement is in accordance with section 735(a)(2)(A) of the Act, and 19 CFR 351.210(b)(2).

Dated: August 11, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–21240 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada; Ministerial Error in Final Results of Full Sunset Reviews of Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of ministerial error in final results of full sunset reviews: pure and alloy magnesium from Canada [C–122–815].

SUMMARY: On July 5, 2000, the Department of Commerce (''the Department'') published in the **Federal Register** the final results of the full sunset reviews of the countervailing duty orders on pure and alloy magnesium from Canada (65 FR 41444, July 5, 2000). Subsequent to the publication of that notice, we received a submission on behalf of Magnesium Corporation of America, (''Magcorp'') alleging a ministerial error in the calculation of the ''all others'' rate (see July 3, 2000, Allegation of Ministerial Error by Magcorp at 2). On July 13, 2000, the Department concluded that the ''all others'' rate of 4.48 percent, which was published in the *Final Result of Review*, and reported to the International Trade Commission (the ''Commission''), was in error. The correct ''all others'' rate is 7.34 percent.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230: telephone (202) 482–1930 and (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2000, the Department of Commerce (''the Department'') published in the **Federal Register** the final results of the full sunset reviews of the countervailing duty orders on pure and alloy magnesium from Canada (65 FR 41444, July 5, 2000). Subsequent to the publication of that notice, we received a submission on behalf of Magcorp alleging a ministerial error in the calculation of the ''all others'' rate. In addition, Magcorp requested that this allegation be commented on and considered on an expedited basis because the Commission was scheduled to vote in this review on July 13, 2000. Consequently, interested parties were given until July 6, 2000, to comment on Magcorp's allegation.

The Department did not receive comments from interested parties by the July 6, 2000, deadline.

On July 13, 2000, the Department notified the Commission that the final results of review contained a ministerial error in the ''all others'' rate, and that the correct ''all others'' rate is 7.34 percent.[1]

Analysis

In the final results of this sunset review, the Department determined that it would report to the Commission the most recent ''all others'' rate of 4.48 percent *ad valorem*, from the third administrative reviews, covering the period from January 1, 1994, through December 31, 1994, which were published April 17, 1997 (*see Pure and Alloy Magnesium from Canada; Final Results of the Third (1994) Countervailing Duty Administrative Reviews*, 62 FR 18749 (April 17, 1997)). However, according to the final results of the second administrative reviews, covering the period January 1, 1993, through December 31, 1993, and published on September 16, 1997, the most recent rate is 7.34 percent *ad valorem (see Pure and Alloy Magnesium from Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607, 48610 (September 16, 1997)).

Moreover, reliance on the rate published in the second (1993) administrative reviews is consistent with the Department's post-Uruguay Round Agreements Act (''URAA'') practice, and in accordance with section 777A(e)(1) of the Act, which replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. As a result, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Therefore, the countervailing duty case deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT). Accordingly, the cash deposit rate applied to companies not reviewed during the 1994 reviews is that established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments, *i.e.*, these 1993 administrative reviews. *See Pure and Alloy Magnesium from Canada; Final Results of the First (1992) Countervailing Duty Administrative Reviews*, 62 FR 13857 (March 24,1997).[2]

[1] *See* July 13, 2000, Letter from Troy H. Cribb, Acting Assistant Secretary for Import Administration to Lynn Featherstone, Director, Office of Investigations, International Trade Commission.

[2] *See also Certain Cut-to-Length Carbon Steel Plate from Mexico; Final Results of Countervailing Duty Administrative Review*, 65 FR 13368, 13369

Continued

Thus, for non-reviewed companies, the cash deposit will be the rate calculated in these 1993 reviews of 7.34 percent *ad valorem,* except from Timminco Limited (which was excluded from the order in the original investigation) (62 FR 4807, 48610, September 16, 1997).

Determination

In the final results of the sunset review, we intended to follow our practice to apply to companies not reviewed during the 1994 reviews the cash deposit rate established in the most recently completed administrative review, *i.e.* the 1993 review. *Id.* The Department made it clear in the final results of the second administrative reviews (the 1993 reviews) that the ''all others'' rate for all future entries would be 7.34 percent *ad valorem. Id.* Accordingly, we are correcting this inadvertent error. Therefore, the correct ''all others'' rate is 7.34 percent.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: August 15, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–21241 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081400C]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish plan teams will meet in Seattle.

DATES: The meetings will be held on September 13–15, 2000. The meetings will begin at 9 a.m. on Wednesday, September 13, and continue through Friday September 15.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Bldg. 4, Room 2079, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501 2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, North Pacific Fishery Management Council, 907–271–2809.

SUPPLEMENTARY INFORMATION: The plan teams will review available stock assessments and catch statistics for Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries and prepare preliminary stock assessment documents, including economic and ecosystem considerations, for the 2001 groundfish fisheries.

Although non-emergency issues may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 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 notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 15, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–21224 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081400D]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's Community Development Quota (CDQ) Committee will meet in Anchorage, AK.

DATES: The meeting will be held on September 22, 2000. The meeting will begin at 9:00 a.m. and conclude by 4:00 p.m. the same day.

ADDRESSES: The meeting will be held at the Westmark Hotel, Penthouse meeting room, 720 West 5th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, North Pacific Fishery Management Council; 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review a regulatory amendment for changes to the CDQ administrative regulations and, if available, other proposed changes to the regulations. More information on the agenda will be posted on the Council's website (www.fakr.noaa.gov/npfmc) by September 15.

Although non-emergency issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in the agenda and any issues arising after publication of this notice the require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 15, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–21225 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081400F]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

(March 13, 2000); *Certain Iron-Metal Castings from India; Preliminary Results and Partial Recission of Countervailing Duty Administrative Review*, 64 FR 61592, 61602 (November 12, 1999); and *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 64 FR 57038 (October 22, 1999).

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of conference call.

SUMMARY: The South Atlantic Fishery Management Council will conduct a telephone conference call of the Bycatch Reduction Device (BRD) Advisory Panel to discuss the BRD Testing Protocol Manual. Conference stations will be established at NMFS Southeast Regional Office in St. Petersburg, FL, Georgia Department of Natural Resources in Brunswick, GA and at the South Atlantic Fishery Management Council (Council) office in Charleston, SC.

DATES: The telephone conference call is scheduled for September 5, 2000 at 10:00 a.m.

ADDRESSES: Conference station locations will be located at the following locations:

1. NMFS Southeast Regional Office at 9721 Executive Center Drive N., St. Petersburg, FL; telephone: (727) 570–5305;

2. Georgia Department of Natural Resources, Coastal Resources Division, One Conservation Way, Suite 300, Brunswick, GA; telephone: (912) 264–7218;

3. South Atlantic Council office, One Southpark Circle, Suite 306, Charleston, SC; telephone: (843) 571–4366.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: Participants in the conference call will have an opportunity to comment on the latest version of the BRD Testing Protocol Manual that includes modifications suggested by the BRD Advisory Panel, NMFS and the Council. Copies of the BRD Testing Protocol Manual can be obtained by contacting the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this conference call. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This conference call is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 31, 2000.

Dated: August 15, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–21226 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Secrecy/License To Export

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 20, 2000.

ADDRESSES: Direct all written comments to Thao P. Nguyen, Acting Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by telephone (703) 308–7397.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, United States Patent and Trademark Office (USPTO), Washington, DC 20231, by telephone number (703) 305–9285.

SUPPLEMENTARY INFORMATION

I. Abstract

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. This collection of information is required by 35 USC 181–188 and administered through 37 CFR Ch. 1, part 5, 5.1–5.33.

II. Method of Collection

By mail, facsimile, or hand carry when the applicant or agent files a patent application with the USPTO, submits subsequent papers during the prosecution of the application to the USPTO, or submits a request for a foreign filing license for a patent application to be filed abroad before the filing of a United States patent application.

III. Data

OMB Number: 0651–0034.

Form Number(s): N/A.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; business or other for profit; not-for-profit institutions; farms; Federal Government; and state, local or tribal Government.

Estimated Number of Respondents: 1,858 total responses per year. Of this total, 2 per year for permit to disclose or modify secrecy order; 4 per year for petition for rescission of secrecy order; 0 per year for general and group permits; 1,625 per year for petition for foreign filing license without a corresponding application on file; 128 per year for petition for foreign filing license on a corresponding application on file; and 99 per year for a petition for retroactive license.

Estimated Time Per Response: It is estimated to take 2.0 hours for permit to disclose or modify secrecy order; 3.0 hours for permit for rescission of secrecy order; 1.0 hours for general and group permits; 0.5 hours each for foreign filing license: petition for foreign filing license without a corresponding United States application, and petition for license with a corresponding United States patent; and 4.0 hours for a petition for retroactive license.

Estimated Total Annual Respondent Burden Hours: 1,289 hours per year.

Estimated Total Annual Respondent Cost Burden: $0 (no capital start-up or maintenance expenditures are required). Using the professional hourly rate of $175 for associate attorneys in private firms, the USPTO estimates $225,575 per year for salary costs associated with respondents.

Item	Estimated time for response (HOURS)	Estimated annual burden hours	Estimated annual responses
Permit to Disclose or Modify Secrecy Order	2	4	2
Permit for Rescission of Secrecy Order	3	12	4
General and Group Permits	1	0	0
Foreign Filing License: Petition for License no corresponding patent application	0.5	813	1,625
Foreign Filing License: Petition for License for corresponding patent application	0.5	64	128
Petition for Retroactive License	4	396	99
Totals		1,289	1,858

IV. Request for Comments

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: August 15, 2000.

Thao P. Nguyen,

Acting Records Officer, Office of Data Management, Data Administration Division.

[FR Doc. 00–21202 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

August 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 22, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50494, published on September 17, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to adjust the current limits for the following categories, as provided for in the agreement between the Governments of the United States and Bulgaria:

Category	Adjusted twelve-month limit [1]
410/624	2,941,686 square meters.
433	15,942 dozen.
448	32,848 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–21219 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

August 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 22, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for swing, reducing the limit for Category 315 to account for the swing being applied. In addition, the limit for Category 443 is also being increased for carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 57867, published on October 27, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 21, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	28,390,821 square meters.
443	155,629 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–21220 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Guatemala

August 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: August 22, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On the request of the Government of Guatemala, the U.S. Government has agreed to increase the current guaranteed access level for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54868, published on October 8, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to increase the guaranteed access level for Categories 347/348 to 1,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–21221 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

August 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also

see 64 FR 70222, published on December 16, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 24, 2000, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
225	6,350,741 square meters.
317	4,468,459 square meters.
333/334/335/833/834/835.	414,309 dozen of which not more than 218,243 dozen shall be in Categories 333/335/833/835.
336/836	89,045 dozen.
338	468,643 dozen.
339	1,942,616 dozen.
340	454,025 dozen.
341	291,876 dozen.
342	133,569 dozen.
345	81,674 dozen.
347/348/847	1,086,356 dozen.
350/850	95,859 dozen.
351/851	101,406 dozen.
359–C/659–C [2]	586,483 kilograms.
359–V [3]	196,403 kilograms.
625/626/627/628/629	6,684,557 square meters.
633/634/635	877,331 dozen.
638/639/838	2,383,410 dozen.
640	194,250 dozen.
641/840	333,866 dozen.
642/842	176,380 dozen.
645/646	428,329 dozen.
647/648	792,595 dozen.
659–S [4]	196,403 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [5], 464 and 469pt. [6], as a group.	1,623,000 square meters equivalent.
Sublevel in Group II	
445/446	89,196 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–21222 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Republic of Turkey

August 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 22, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347–T/348–T is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 62659, published on November 17, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to increase the current limit for Categories 347–T/348–T to 2,464,576 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

[1] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050; The limit has not been adjusted to account for any imports exported after December 31, 1999.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–21223 Filed 8–18–0; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Force Sustainment Division announces the proposed extension to AF Form 2800, Family Center Individual/Family Data Card; AF Form 2801, Family Support Center Interview and Follow-up Summary; AF Form 2805, Family Support Center Volunteer Data and Service Record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 20, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ USAF/DPDF, 1040 Air Force Pentagon, Room 5C238, Washington, DC 20330–1040, ATTN: Major Jay Doherty.

FOR FURTHER INFORMATION CONTACT: To request more information on these proposed data collection instruments, please write to the above address or call (703) 697–4720.

Title and Associated Form: Family Support Center Individual/Family Data Card, AF Form 2800; Family Support Center Interview and Follow Up Summary, AF Form 2801; Family Support Center Volunteer Data and Service Record, AF Form 2805.

Needs and Uses: The information collection requirement is necessary to obtain demographic data about individuals and family members who utilize the services of the Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as program evaluation, service targeting, and future budgeting. It also provides demographic data on volunteers and tracks volunteer service.

Affected Public: All those eligible for services provided by Family Support Centers (all Department of Defense personnel and their families) and those who volunteer in the Family Support Center.

Annual Burden Hours: 750.

Number of Respondents: 10,000.

Responses Per Respondent: 3.

Average Burden per Response: 5 Minutes.

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents could be all those eligible for services, i.e., all Department of Defense personnel and their families. The completed form is used to gather demographic data on those who use Family Support Centers, track what programs or services they use and how often. The elements in this form are the basis for quarterly data gathering which is forwarded through the Major Commands to the Air Staff.

Janet A. Long,

Air Force, Federal Register Liaison Officer.

[FR Doc. 00–21203 Filed 8–18–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Reserve Officer Training Corps announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 20, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collections should be sent to HQ AFROTC/RRU, 551 East Maxwell Boulevard, Maxwell AFB, AL 36112–6106. Comments can also be submitted via e-mail to kyle.monson@maxwell.af.mil.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses or call (334) 953–2829.

Title, Associated Form, and OMB Number: Application for AFROTC Membership, OMB Number 0701–0105.

Needs and Uses: To obtain the information needed by HQ AFROTC and the AFROTC Detachment on which to base a decision of acceptance/nonacceptance to be a member of AFROTC.

Affected Public: College students who apply to join Air Force ROTC.

Annual Burden Hours: 4,000.

Number of Respondents: 12,000.

Responses Per Respondent: 1.

Average Burden Per Response: 20 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are college students who apply for membership in Air Force ROTC. The collected data is used to determine whether or not an applicant is eligible to join the Air Force ROTC program and, if accepted, the enrollment status of the applicant within the program. Upon acceptance into the program, the collected information is used to establish personal records for Air Force ROTC cadets. Eligibility for membership cannot be determined if this information is not collected.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–21204 Filed 8–18–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. This meeting will be hosted by the U.S. Army, Operations Support Command. The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—Strategic Planning for the ARMS Program; the ARMS/USDA Loan Guarantee Program; Facility Contracting and Leasing; ARMS Database and Metrics; and a FAR 45 Update. This meeting is open to the public.

DATE OF MEETING: October 11–12, 2000.

PLACE OF MEETING: Blackhawk Hotel, 200 East Third Street, Davenport, Iowa 52801.

TIME OF MEETING: 1 a.m.–5 p.m. on October 11 and 8 a.m.–2 p.m. on October 12.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: A block of rooms has been reserved at the Blackhawk Hotel for the nights of 10–11 October 2000. The Blackhawk Hotel is located at 200 East Third Street, Davenport, Iowa, 52801, Local Phone (319) 328–6000. Please make your reservations by calling 800–553–1173. Be sure to mention that you are attending the ARMS PPTF and/or use group code 3248. Reserve your room prior to September 19th to get the Government Rate of $55.00 a night. Also notify this office of your attendance by notifying either Susan Alten, *susan.alten@hqda.army.mil*, 703–617–4246 (DSN 767–4246) or Elwood Weber, *eweber@hqamc.army.mil*, 703–617–9788 (DSN 767–9788). *To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by September 19, 2000.* Corporate casual is meeting attire.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21139 Filed 8–16–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Committee Meeting Cancellation Notice

AGENCY: United States Army School of the Americas (USARSA), Training and Doctrine Command (TRADOC), U.S. Army, DoD.

ACTION: Notice; withdrawal.

SUMMARY: This document withdraws from consideration the Committee Meeting Notice published in the **Federal Register** on August 14, 2000 (Vol. 65, No. 157) page 49549. Reason for withdrawal is based on a scheduling conflict on the part of the Commanding General of the U.S. Army Training and Doctrine Command, Gen. John N. Abrams. The meeting of the Subcommittee (Board of Visitors) of the Army Education Advisory Committee dealing with the U.S. Army School of the Americas (USARSA), scheduled for August 22—24 has been cancelled. A date for the rescheduled meeting will be announced at a later time.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to LTC Bruce T. Gridley, U.S. Army School of the Americas, ATTN: ATZB–SAZ–CS, Ft. Benning, Georgia 31905–6245.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21422 Filed 8–18–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Soldier and Biological Chemical Command, U.S. Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1) and 35 U.S.C. 209, announcement is made of the availability for licensing of the following U.S. Patents for nonexclusive, exclusive or partially exclusive licensing. All of the patents listed below have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

''Low Concentration Aerosol Generator'', U.S. Patent 5,918,254 Issued 29 June 1999

The Low concentration Aerosol Generator provides an improved aerosol particle generation apparatus useful in the calibration and profiling of aerosol analyzing instruments which are used to detect biological warfare agents. The apparatus is capable of generating aerosol particles of a known particle size, having a known particle count, and in low concentrations.

''Hydrolysis and Biodegration of the Chemical Warfare Vesicant Agent HT'', U.S. Patent 6,017,750 Issued 25 January 2000

This invention relates generally to the field of demilitarizing chemical warfare agents. More particularly, the invention provides a method of detoxifying the chemical warfare agent HT using a sequencing bioreactor.

''Propellant Based Aerosol Generating Device and Method of Use'', U.S. Patent 6,047,644 Issued 11 April 2000

The present invention relates to a device and method for aerosol using propellant gas generation to provide a pyrotechnic, non-explosive means for propellant disseminated aerosol payloads for military and civilian purposes.

''Continuous Fed-Batch Degradation of Decontaminating Solution 2 (DS2)'', U.S. Patent 6,054,310 Issued 25 April 2000

The present invention is a process for biodegradation of an amine compound and a composition useful in that process. The process and composition allow for the degradation of amine compounds that are environmental

toxic, especially chemical compound containing DETA such as DS2. The process provides for the continuous fed-batch biodegradation of Decontamination Solution 2 (DS2).

''Infrared Mueller Matrix Detection and Ranging System'', U.S. Patent 6,060,710 Issued 9 May 2000

The present invention relates to an active remote sensing system. It identifies chemical and/or biological materials (CBMs) at a distance by interrogating the materials with modulated polarized infrared laser light, collect backscattered polarized infrared laser radiation, electronically record the information from the collected polarized infrared radiation, and mathematically analyze the information to identify the CBMs. Additionally, the device and method may determine the distance to the CBMs.

''Solid Particle Aerosol Belt and Dissemination Method'', U.S. Patent 6,076,671 Issued 20 June 2000

The present invention is a solid particle aerosol device and a method for disseminating the solid particle aerosol from the device. The device and method of solid particle aerosol dispersal permit easy handling and dissemination of the solid particle aerosol in combat and non-combat operations. The device and method also provide rapid and efficient dispersal of solid particle aerosol into the atmosphere for military and civilian purposes.

''Enzymatic Detoxification of Organophosphorus Compounds'', U.S. Patent 6,080,566 Issued 27 June 2000

The present invention relates generally to the hydrolysis of organophosphorus compounds. More specifically, the present invention relates to the expression of a recombinant bacterial enzyme which is useful for detoxifying cholinesterase-inhibiting organophosphorus compounds such as pesticides and chemical nerve agents and the decontamination of substances contaminated with these compounds.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Gross, Technology Transfer Office, U.S. Army SBCCOM, ATTN: AMSSB–RAS–C, 5183 Blackhawk Road (Bldg E3330/245), APG, MD 21010–5423; Phone: (410) 436–5387 or E-mail: rigross@sbccom.apgea.army.mil.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21138 Filed 8–18–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A miniature, planar, delay slider actuator micromachined on a substrate.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any part interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Miniature, Planar, Inertially-Damped, Inertially-Actuated Delay Slider Actuator.

Inventor: Charles H. Robinson.

Patent Number: 6,064,013.

Issued Date: May 16, 2000.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952: fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21140 Filed 8–18–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS) in Conjunction With Proposed Flood Control Measures (Levee 37) on the Upper Des Plaines River at Mount Prospect in Cook County, IL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The project involves proposed construction of flood control measures along the Upper Des Plaines River at Prospect Heights and Mount Prospect in Cook County, Illinois. Alternatives under consideration include earthen levees, concrete floodwalls, and temporary road closures.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Ryder, 312/353–6400 ext. 2020; U.S. Army Corps of Engineers, Suite 600, 111 North Canal Street; Chicago, Illinois 60606–7206.

SUPPLEMENTARY INFORMATION: The Supplemental Environmental Impact Statement will document changes to the recommended plan (pertinent to the levee 37 project area) originally proposed in the 1999 environmental impact statement.

Mark A. Roncoli,

Colonel, U.S. Army District Engineer.

[FR Doc. 00–21142 Filed 8–18–00; 8:45 am]

BILLING CODE 3210–HN–M

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 00–17: Advanced Detector Research Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Advanced Detector Research Program. Applications should be from investigators who are currently involved in experimental high energy physics, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the new detector technologies needed to perform future high energy physics experiments.

DATES: To permit timely consideration for award in fiscal year 2001, formal applications submitted in response to this notice should be received before December 5, 2000.

Applicants are requested to submit a letter of intent by November 1, 2000, which includes the title of the proposal, the name of the principal investigator(s), the requested funding and a one-page abstract. Failure to submit a letter of intent will not negatively prejudice a responsive formal application submitted

in a timely manner. Electronic submissions of letters of intent are acceptable.

ADDRESSES: Completed formal applications referencing Program Notice 00–17 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–17. The above address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional four copies of the application.

Letters of intent referencing Program Notice 00–17 should be forwarded to: U.S. Department of Energy, Office of Science, Division of High Energy Physics, SC–221, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Michael Procario. Letters of intent can also be submitted via E-mail at the following E-mail address: michael.procario@science.doe.gov

FOR FURTHER INFORMATION CONTACT: Dr. Michael Procario, Division of High Energy Physics, SC–221 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–2890. E-Mail: michael.procario@science.doe.gov

SUPPLEMENTARY INFORMATION: Future high energy physics experiments will require higher performance detectors to exploit the higher beam energies and intensities of new or upgraded accelerators. Higher performance detectors are also needed to probe for new physical processes in both accelerator and non-accelerator based experiments. Proposed detector research should be driven by the anticipated needs of experiments to be built within the foreseeable future, as well as upgrades to current experiments. Interesting technologies would include but not be limited to charged particle track detectors, calorimeters or particle identification detectors that are less sensitive to radiation, have higher resolution, are lower in cost, or can be read out faster than currently available detectors.

It is anticipated that in fiscal year 2001 approximately $500,000 will be awarded in total, subject to availability of appropriated funds. The number of awards will be determined by the number of excellent applications and the total funds available for this program. Multiple year funding of grant awards is possible, with funding provided on an annual basis subject to availability of funds. Cost sharing is encouraged but not required. It is expected that the final development or fabrication of detectors for specific experiments will *not* be funded by this program.

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 DOE National Laboratories. In the case of collaborative applications submitted from different institutions which are directed at a single research activity, each application must have a different scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. Further information on preparation of collaborative proposals may be accessed via the Internet at http://www.sc.doe.gov/production/grants/Colab.html

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 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; and

4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html

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 August 9, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management, Office of Science.

[FR Doc. 00–21188 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 00–16; Division of Nuclear Physics Outstanding Junior Investigator Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of Nuclear Physics of the Office of Science (SC), U.S. Department of Energy, invites grant applications for support under the Outstanding Junior Investigator Program in nuclear physics. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. Applications should be from tenure-track faculty who are currently involved in experimental or theoretical nuclear physics research, and should be submitted through a U.S. academic institution.

DATES: To permit timely consideration of awards in fiscal year 2001, formal applications submitted in response to this notice should be received by November 15, 2000.

ADDRESSES: Applications referencing Program Notice 00–16 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–16. The above address must be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Although it is not required, it would be helpful for each applicant to submit twelve copies of their application, due to the anticipated number of reviewers.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis G. Kovar, Director, Division of Nuclear Physics, SC–23, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–3613. Fax: (301) 903–3833. E-Mail: dennis.kovar@science.doe.gov

SUPPLEMENTARY INFORMATION: This is the second year of an Outstanding Junior

Investigator Program in Nuclear Physics. A principal goal of this program is to identify exceptionally talented nuclear physicists early in their careers and to facilitate the development of their research programs. The proposed research is expected to make an important contribution to the vigor of the U.S. Nuclear Physics program.

The DOE expects to make several awards in FY 2001; five awards were made in FY 2000. The actual number of awards will be determined by the number of excellent applications and the total amount of funds available for this program. It is anticipated that a total of up to $250,000 will be available in FY 2001 for funding the program, subject to availability of appropriated funds, and that awards would be for three to five year terms. At the end of the initial term these grants may be renewed, subject to appropriate external peer review at the time of renewal, as long as the recipient's tenure status is unchanged.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, listed in descending order of importance as codified at 10 CFR Part 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.

Additional criteria which will be considered: future promise of the investigator, and the resources and interest of the sponsoring institution.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. The latest version of SC's Application Guide is available on the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html

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 August 9, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–21189 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 7, 2000; 9 a.m. to 6 p.m. and Friday, September 8, 2000; 9 a.m. to 5 p.m.

ADDRESSES: Doubletree Hotel, 1750 Rockville Pike, Regency Conference Room, Rockville, Maryland 20852–1699

FOR FURTHER INFORMATION CONTACT: Cathy A. Hanlin, U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–3613

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

Thursday, September 7, 2000, and Friday, September 8, 2000

- Briefing on DOE Office of Science; Office of High Energy and Nuclear Physics; and Division of Nuclear Physics Activities and Budget Outlook
- Briefing on NSF Mathematical and Physical Sciences Directorate; Physics Division; and Nuclear Physics Program Activities and Budget Outlook.
- Discussion of the charge to NSAC on the development of a Long Range Plan.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Cathy A. Hanlin at 301–903–3613. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 16, 2000.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 00–21190 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 7, 2000, 6 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Quarterly Update—Colorado Department of Public Health and Environment.

2. Updates on activities of Board committees.

3. SSAB Stewardship Workshop Planning.

4. Comments to Colorado Water Quality Control Commission.

5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or

telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m to 4 p.m., Monday—Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on August 16, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–21191 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 7, 2000, 9 a.m.–5 p.m.; Friday, September 8, 2000, 8:30 a.m.–4 p.m.

ADDRESSES: Radisson Hotel, 17001 Pacific Highway S., Seattle, WA, (206) 244–6000.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

—DOE–RL's Hanford Vision: The River, The Plateau, The Future

—DOE–ORP: Status on Obtaining Tank Waste Treatment Capability, including Status of Consent Decrees

—Spent Fuel Project—Project Update

—DOE—RL, DOE–ORP, Washington Department of Ecology, U.S. Environmental Protection Office identify and discuss the major polity issues for the coming year.

—Environmental Restoration

—300–FF–2 Focused Feasibility Study and Proposed Plan

—Environmental Protection Agency (EPA) Five Year Remedy Review

—Preliminary Report on Hanford Fire

—FY 2001 Performance Incentives

—Updates

—Transuranic Project Management Plan

—WIPP Shipments

—Solid (Radioactive and Hazardous) Waste Draft EIS

—Overview of Site Specific Advisory Board (SSAB) Chairs Meeting

—Hanford Advisory Board Chairperson Transition

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on August 16, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–21192 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–445–000, CP97–168–004, CP97–169–000, CP97–177–000, and CP97–178–000]

Alliance Pipeline L.P.; Notice of Application to Amend Certificate, Approve Revised Tariff and Extend Waiver

August 15, 2000.

Take notice that on August 4, 2000, Alliance Pipeline L.P. (Alliance) tendered for filing its FERC Gas Tariff, Original Volume No. 1, proposed to become effective October 2, 2000. Alliance states that the purpose of this filing is to comply with the Commission's orders issued August 1, 1997 and September 17, 1998 in Docket Nos. CP97–168–000, *et al.* and to place the Alliance tariff into effect October 2, 2000, the anticipated in-service date of the pipeline. Alliance also requests an extension of the waiver granted in Docket No. RP00–243 issued June 14, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.2124 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21152 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–456–000 and CP98–256–003]

Clear Creek Storage Company, L.L.C.; Notice of Tariff Filing

August 15, 2000.

Take notice that on August 10, 2000, Clear Creek Storage Company, L.L.C. (Clear Creek) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 1, 2000:

First Revised Sheet No. 4
First Revised Sheet No. 4A
Substitute Original Sheet No. 35
First Revised Sheet No. 38
Original Sheet No. 38A
First Revised Sheet No. 41
Original Sheet No. 41A
First Revised Sheet No. 43
First Revised Sheet No. 44
Original Sheet No. 44A

Clear Creek states that the proposed tariff sheets (1) implement provisions that enable releasing customers to waive the price ceiling for capacity release transactions for a term of less than one year, as provided by Order Nos. 637 and 637–A and (2) incorporate Clear Creek's web page address as follow up to the Commission's May 11, 2000, letter order in Docket No. CP98–256–002. Clear Creek states further that in as much as Section VII of Order No. 637 allows pipelines to combine with any other tariff filing made within the appropriate time frame, its tariff filing to implement the waiver of the maximum price cap, Clear Creek has chosen to combine its tariff filing incorporating the new regulatory changes with a tariff filing that will add its new web page address to Section 2.5 of the General Terms and Conditions of its FERC Gas Tariff.

Clear Creek explains further that although Order Nos. 637 and 637–A mandate an effective date of March 26, 2000, for the waiver of maximum rate ceiling regulations, Clear Creek believes that the proposed effective date is appropriate because it is consistent with the initial date of Original Volume No. 1 of its FERC Gas Tariff.

Clear Creek states that a copy of this filing has been served upon its customers and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21154 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3080–000]

Otter Tail Power Company; Notice of Issuance of Order

August 15, 2000.

Otter Tail Power company (Otter Tail) submitted for filing a rate schedule under which Otter Tail will engage in wholesale electric power and energy transactions at market-based rates. Otter Tail also requested waiver of various Commission regulations. In particular, Otter Tail requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Otter Tail.

On August 11, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Otter Tail should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Otter Tail is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Otter Tail's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests as set forth above, is September 11, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21181 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–372–001]

TCP Gathering Company; Notice of Tariff Cancellation

August 15, 2000.

Take notice that on August 1, 2000, TCP Gathering Company (TCP), tendered for filing in Docket No. CP00–372–001, an application pursuant to ordering Paragraph C of the Order Approving Abandonment issued July 28, 2000 in Docket No. CP00–372–000, and Section 154.602 of the Commission's regulations, to cancel its FERC Gas Tariff, Original Volume No. 1, effective August 1, 2000.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 22, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may

be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21153 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG00–7–001]

Texas Gas Transmission Corporation; Notice of Filing

August 15, 2000.

Take notice that on July 24, 2000, Texas Gas Transmission Corporation filed revised standards of conduct under Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21155 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3092–001, et al.]

K2 Development LLC, et al.; Electric Rate and Corporate Regulation Filings

August 14, 2000.

Take notice that the following filings have been made with the Commission:

1. K2 Development LLC

[Docket No. ER00–3092–001]

Take notice that on August 9, 2000, K2 Development LLC (formerly known as Vitol Gas & Electric LLC) tendered for filing an amendment to its Notice of Name Change in the above-captioned proceeding. The amendment consists of (i) its First Revised Rate Schedule FERC No. 1, designated and formatted to comply with the Commission's recently-adopted regulations on rate schedule designations, 18 CFR 35.9 (adopted in Order No. 614), and (ii) Notices of Cancellation pursuant to Sections 35.15 and 131.53 of the Commission's Regulations, 18 CFR 35.15 and 131.53, with respect to its Rate Schedule FERC Nos. 2 through 24 and any and all supplements thereto.

Comment date: August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Cleco Energy LLC

[Docket No. ER00–3382–000]

Take notice that on August 9, 2000, Cleco Energy LLC (Cleco Energy), tendered for filing proposed cancellation of its FERC Electric Service Tariff, Rate Schedule F.E.R.C. No. 1, and Supplement No. 1 to Rate Schedule F.E.R.C. No. 1, Revision No. 1, Docket No. ER99–3947–000.

Cleco Energy has not made any electric sales under the above named Rate Schedule and none are envisioned.

Comment date: August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3383–000]

Take notice that on August 9, 2000 Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 320 to add FirstEnergy Trading Services, Inc. to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is August 8, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER00–3384–000]

Take notice that on August 9, 2000, Virginia Electric and Power Company, doing business as Virginia Power (the Company), filed a letter agreement dated December 15, 1999, that provides for service to Northern Virginia Electric Cooperative (the Cooperative). The letter agreement amends an existing service agreement with Old Dominion Electric Cooperative (ODEC) by establishing the terms and conditions for the addition of ''excess facilities'' at the Beamertown Delivery Point to improve service to the Cooperative.

The Company requests their filing be made effective on August 25, 2000.

Copies of the filing were served upon the Cooperative, ODEC and the Virginia State Corporation Commission.

Comment date: August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER00–3386–000]

Take notice that on August 9, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection

Agreement with Bio-Energy Partners for Generation Interconnection and Parallel Operation.

CILCO requested an effected date of July 10, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21149 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–241–000, et al.]

Tecnoguat, S.A., et al.; Electric Rate and Corporate Regulation Filings

August 15, 2000.

Take notice that the following filings have been made with the Commission:

1. Tecnoguat, S.A.

[Docket No. EG00–241–000]

Take notice that on August 10, 2000, Tecnoguat, S.A., a corporation (sociedad anonima) organized under the laws of Guatemala (Applicant), with its principal place of business at Diagonal 6 10–65 Zona 10, Centro Gerencial Las Margaritas, Torre I, Nivel 8, Oficina 8, 01010 Guatemala, Guatemala, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 14 megawatt hydroelectric power production facility located in central Guatemala.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cleco Evangeline LLC

[Docket No. ER00–3058–001]

Take notice that on August 10, 2000, Cleco Evangeline LLC (Cleco Evangeline), amended its filing of a sale and tolling agreement under which Cleco Evangeline will make market-based power sales to Williams Energy Marketing & Trading Company. Cleco Evangeline originally filed the sale and tolling agreement July 3, 2000, with a request for confidential treatment of the agreement pursuant to 18 CFR 388.112. The amended filing does not contain a request for confidential treatment. Cleco Evangeline is an affiliate of Cleco Utility Group Inc., a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. 79l(a) et. seq.

A copy of the filing has been served upon Williams Energy Marking & Trading Company.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company, and Conectiv Delmarva Generation, Inc.

[Docket No. ER00–3168–001]

Take notice that on August 10, 2000, Conectiv withdrew its Notice of Succession in Ownership in Docket No. ER00–3168–000 and submitted Notices of Full and Partial Succession in Ownership and certificates of concurrence in certain agreements affected by the transfer to CDG of Delmarva's interests in the Keystone and Conemaugh generating facilities. Those agreements include the Keystone Operating agreement, Keystone Interconnection Agreement, Conemaugh Operating Agreement, Conemaugh Interconnection Agreement and the 115 kV Seward-Conemaugh Interconnection Facilities Agreement.

Conectiv requests that these notices become effective on July, 1, 2000, the date of the transfer of the Keystone and Conemaugh generating facilities from Delmarva to CDG.

Conectiv has served the affected state commissions, Delmarva's wholesale requirements customers, parties to the Keystone and Conemaugh interconnection and operating agreements with this filing.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER00–3387–000]

Take notice that on August 10, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Pepco Energy Services, Inc. Under the Service Agreement, Virginia Power will provide services to Pepco Energy Services, Inc., under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of July 27, 2000, the date service was first requested by the customer.

Copies of the filing were served upon Pepco Energy Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–3388–000]

Take notice that on August 10, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 83 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements to make service available as of April 12, 2000 to Amerada Hess Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER00–3389–000]

Take notice that on August 10, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a revised Schedule 1 to the Participating Generator Agreement (PGA) between the ISO and San Joaquin Cogen Limited. (Rate Schedule No. 283).

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C.

[Docket No. ER00–3390–000]

Take notice that on August 10, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed umbrella service agreement for network integration transmission service under the PJM Open Access Transmission Tariff with Essential.com, Inc. (Essential.com).

Copies of this filing were served upon Essential.com and the state commissions within the PJM control area.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER00–3391–000]

Take notice that on August 10, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a signature page for Allegheny Electric Cooperative, Inc. (Allegheny) adding Allegheny as a Party to the Transmission Owners Agreement, dated June 2, 1997, and a revised Attachment L to the PJM Tariff adding Allegheny to the list of Regional Transmission Owners.

PJM has served a copy of this filing upon all members of PJM and each of the state regulatory commissions within the PJM control area.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER00–3392–000]

Take notice that on August 10, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance materials to terminate the membership of Washington Electric Cooperative, Inc. (WEC). At the request of WEC, the Participants Committee seeks a July 1, 2000 effective date for that termination.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. CMS Generation Michigan Power, L.L.C.

[Docket No. ER00–3393–000]

Take notice that on August 10, 2000, CMS Generation Michigan Power, L.L.C. (Michigan Power), tendered for filing an executed long-term service agreement for wholesale power sales with CMS Marketing, Services and Trading Company pursuant to Michigan Power's Market-Based Rate Tariff, accepted for filing in Docket No. ER99–3677–000.

Copies of the filing have been served on the Michigan Public Service Commission and CMS Marketing, Services and Trading Company.

Comment date: August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21148 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–48–000]

Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Londonderry 20″ Replacement Project

August 15, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee Gas) 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 the proposed replacement including—

- 19.3 miles of 20-inch-diameter pipeline in Middlesex County, Massachusetts, and Hillsborough and Rockingham Counties, New Hampshire;
- a new 130,000 dekatherms per day (dthd) meter site adjacent to the existing Londonderry Meter Station in Rockingham County, New Hampshire; and
- four new mainline valves.

The 20-inch-diameter pipeline and three of the mainline valves would replace 19.3 miles of the existing 8-inch-diameter Concord #1 Lateral (270B–100) from Valve 270B–103 in Dracut, Massachusetts, to the Londonderry Meter Station in Londonderry, New Hampshire, and three associated 8-inch mainline valves.

Tennessee Gas proposes to locate the new pipeline in the same right-of-way occupied by the replaced pipeline and a 12-inch-diameter pipeline that would remain in place.

The purpose of the proposed facilities would be to transport 130,000 dthd of natural gas to the AES-Londonderry Project planned by AES Enterprises (AES). The AES-Londonderry Project is a 720-megawatt, natural gas-fired combined cycle power plant.

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, NW., 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 gas Group 2, PJ–11.2.
- Reference Docket No. CP00–48–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 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). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns maybe granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. 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, slick 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. 00–21151 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 15, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 2177–040.

c. *Date Filed:* July 31, 2000.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Middle Chattahoochee.

f. *Location:* On the Chattahoochee River, in Lee, Alabama, and Harris and Muscogee Counties, Georgia.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. R.L. Boyer, Vice President, Power Generation, Georgia Power Company, 241 Ralph McGill Blvd. NE, Bin 10170, Atlanta, GA 30308. (404) 506–7892.

i. *FERC Contact:* Any questions on this notice should be addressed to Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: anumzziatta.purchiaroni@ferc.fed.us

j. *Deadline for filing comments and or motions:* September 14, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (2177–040) on any comments or motions filed.

k. *Description of Amendment:* The licensee proposes to add capacity to two of six existing generating units at the Goat Rock powerhouse. The existing generating units 1 and 2 would be replaced by two new horizontal bulb turbines and two new generators. The capacity addition would improve hydraulic balance of the existing system of hydropower reservoirs on the middle reach of the Chattahoochee River. It would also increase generating capacity of the project from 116.7 MW to 129.3 MW.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date of the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–21150 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6855–2]

Peer Review for Superfund Probabilistic Risk Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer review; request for nominations for peer reviewers.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Eastern Research Group (ERG), an EPA contractor for external scientific peer review, will organize, convene, and conduct an external peer review panel workshop to review the draft document titled, Risk Assessment Guidance for Superfund Volume 3 Part A: Process for Conducting Probabilistic Risk Assessment (RAGS 3A). RAGS 3A provides guidance on conducting site-specific human health and ecological probabilistic risk assessment (PRA) under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund).

ERG is seeking nominations of highly qualified scientists with expertise in one or more of the following disciplines: Biostatistics, ecological toxicology, site-specific risk assessment of hazardous waste sites, general practice of PRA, and exposure assessment (data evaluation or application to risk assessment). Please submit a detailed resume for each nominated scientist. ERG will follow up each submission with an informational memo and forms to be filled out regarding specific areas of expertise and experience required for the review, including a conflict of interest form.

Members of the public may attend as observers, and there will be a limited time for comments from the public.

DATES: The peer review workshop will be held on Wednesday and Thursday, November 8–9, 2000, from 8:30 a.m. until 5 p.m. each day. Nominations for peer reviewers must be submitted within 30 days of this notice or no later than September 15, 2000.

ADDRESSES: Peer reviewer nominations should be sent to Ms. Meg Vrablik at Eastern Research Group, 110 Hartwell Avenue, Lexington, MA 02421. Peer reviewer nominations may also be submitted by facsimile at 781–674–2906, or by e-mail at mvrablik@erg.com. The external peer-review panel workshop will be held at the Hilton Crystal City Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia, 22202, 703–418–6800. Eastern Research Group (ERG), an EPA contractor for external scientific peer review, is organizing, convening, and conducting the workshop. To attend the workshop, please register by October 20, 2000, by calling Eastern Research Group's registration line at 781–674–7374, or mailing a registration request that includes your name, organization, mailing address, phone, fax, and e-mail address to ERG, Attn: RAGs 3a, 110 Hartwell Avenue, Lexington, MA 02421, or send a facsimile, Attn: RAGs 3a, to 781–674–2906. You may also register online at *http://www.erg.com/conferences/index.htm.* Space is limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. When registering, please let ERG know if you wish to make oral comments at the workshop.

The draft guidance document is available on the Internet at *http://www.epa.gov/superfund/pubs.htm#r.* A limited number of paper copies will be available on site for reference.

FOR FURTHER INFORMATION CONTACT: For logistical inquiries, contact Ms. Vrablik or Ms. Kate Schalk at Eastern Research Group, by telephone, at 781–674–7272; by facsimile, at 781–674–2906; or by e-mail, at *mvrablik@erg.com.* For technical inquiries, contact Mr. S. Steven Chang at EPA, 703–603–9017.

SUPPLEMENTARY INFORMATION:

Background

OERR is updating the existing Risk Assessment Guidance for Superfund (RAGS) to add probabilistic risk analysis as a tool for conducting risk assessment at Superfund sites. The draft Risk Assessment Guidance for Superfund Volume 3 Part A: Process for Conducting Probabilistic Risk Assessment (RAGS 3A) provides guidance on conducting site-specific human health and ecological probabilistic risk assessments (PRA), and is part of the EPA Superfund Reforms announced in October 1995 by EPA Administrator Browner. The draft was announced for public comment on February 15, 2000 (65 FR 7550). EPA will consider both the public comments and the peer-review comments in revising the document.

Probabilistic risk analysis, as exemplified by Monte Carlo Analysis (MCA), is a tool for characterizing the uncertainty and variability of risk estimates and provides a range of estimates of risk in addition to the traditional point estimate approach. RAGS 3A provides guidance for conducting PRA using MCA, with emphasis on analyzing the exposure factors such as intake rate and exposure duration for chronic exposure. PRA is not a requirement for conducting risk assessment at Superfund sites.

OERR announced RAGS 3A in the **Federal Register** on February 15, 2000, (65 FR 7550) and made it available on the Internet for a 60-day public comment period. OERR is evaluating comments received and will consider them in revising the draft document.

Peer Review

The peer review in general will focus on the RAGS 3A scientific approaches and clarity regarding implementation. Following the external peer-review panel workshop, ERG will prepare a report summarizing the workshop, which will be available from EPA. OERR will consider the peer-review comments prior to finalizing the RAGS 3A. OERR will then publish the document as Risk Assessment Guidance for Superfund Volume 3 Part A: Process for Conducting Probabilistic Risk Assessment in late 2000 or early 2001 and make it available on the Internet at *http://www.epa.gov/superfund/pubs.htm#r.*

ERG will select independent peer reviewers based upon demonstrated expertise of the scientists and the need for balance in scientific expertise among the peer reviewers. All nominees will receive a memo and availability/expertise form to fill out, including a conflicts of interest screening form. Nominees must also provide ERG with their full resume/C.V. All nominations will be carefully considered, but the source of peer reviewer nominations will not be a factor in the selection of peer reviewers, and nominators are not guaranteed that any of their nominees will be selected.

Dated: August 15, 2000.

Larry G. Reed,

Acting Office Director, Office of Emergency and Remedial Response.

[FR Doc. 00–21197 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PB–404406–KS; FRL–6738–7]

Hazard Education Before Renovation of Target Housing; State of Kansas Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On June 28, 2000, the State of Kansas submitted an application for EPA approval to administer and enforce requirements for hazard education before renovation of target housing and child-occupied facilities under section 406 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–404406–KS, must be received on or before October 5, 2000. In addition, a public hearing request may be submitted on or before August 28, 2000.

ADDRESSES: Comments and the public hearing request 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–404406–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, 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 renovation and remodeling activities of pre-1978 housing 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?

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,'' ''Regulations and Proposed Rules,'' 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/.

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–404406–KS in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101.

2. *In person or by courier.* Deliver your comments and hearing requests to: Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Region VII, Environmental Protection Agency, 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 your 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–404406–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 technical person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the

name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The State of Kansas has provided a self-certification letter stating that its pre-renovation notification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Kansas pre-renovation notification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., June 28, 2000). 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, Public 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 (15 U.S.C. 2682) 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 (15 U.S.C. 2684), 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 (15 U.S.C. 2684(h)), 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 (section 404(b) of TSCA, 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 and/or pre-renovation notification 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 (15 U.S.C. 2684(a)). 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 pre-renovation education 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, abatement projects and remodeling and renovation education. The department operates under the authority of Kansas Statutes Annotated 65–1, 201 to 65–1, 214. Together, these functions fulfill the requirements for an EPA approved State program and ensure the quality of lead abatement, lead-based paint activities and pre-renovation education conducted in Kansas.

The pre-renovation education rule is a State regulation affecting construction contractors, property managers, and others who perform renovations for compensation in residential housing that may contain lead-based paint. It applies to residential houses and apartments built before 1978. It requires distribution of the lead pamphlet, *Protect Your Family from Lead in Your Home*, to the owners and occupants before starting renovation work. Renovation includes most repair, remodeling, and maintenance activities that disturb painted surfaces. Exceptions to the rule are made for emergency repairs, lead abatement projects, minor repairs, and work in zero-bedroom dwellings and housing for the elderly.

The Lead Poisoning Prevention Program staffing consists of the following: Barry Brooks, Director, Public Service Executive; Sue Bowden, Nurse Consultant, Public Health Nurse; Thomas Morey, Environment Consultant; Craig Pearman, Licensing Technician; and Maria Albert and Elizabeth Sullivan, Interns.

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 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 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, Renovation notification, Reporting and record keeping requirements.

Dated: August 10, 2000.

Dennis D. Grams,

Administrator, Region VII.

[FR Doc. 00–21199 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51948; FRL–6599–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22, 2000 to June 23, 2000, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments 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 OPPTS–51948 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA–Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. 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 OPPTS–51948. 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 in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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 OPPTS–51948 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51948 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI 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.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22, 2000 to June 23, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0836	05/22/00	08/20/00	Ashland Inc.	(G) Adhesive	(G) Modified copolymer of acrylic esters and styrene
P–00–0837	05/22/00	08/20/00	Dow Corning Corporation	(S) Filler treatment	(S) Cyclosiloxanes, di-me, me vinyl*
P–00–0838	05/22/00	08/20/00	Eastman Kodak Company	(G) Contained use in an article	(G) Substituted alkylsulfonamide
P–00–0839	05/22/00	08/20/00	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–00–0840	05/22/00	08/20/00	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–00–0841	05/22/00	08/20/00	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–00–0842	05/22/00	08/20/00	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–00–0843	05/22/00	08/20/00	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–00–0844	05/22/00	08/20/00	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–00–0845	05/23/00	08/21/00	CBI	(G) Impact modifier for epoxy resin	(G) Epoxy nitrile rubber amine adduct
P–00–0846	05/23/00	08/21/00	CBI	(S) Inks; coatings	(G) Polyester acrylate
P–00–0847	05/24/00	08/22/00	CBI	(S) Component of wire enamels used in electrical industry	(G) Cresol-blocked isocyanate
P–00–0848	06/02/00	08/31/00	Denka Corporation	(S) Expansive additive for concrete	(S) Limestone, reaction product with bauxite and gypsum
P–00–0849	05/25/00	08/23/00	Nova Molecular Technologies, Inc.	(S) Corrosion inhibitor; chemical intermediate; extraction solvent	(S) Morpholine, 4-(1,1-dimethylethyl)-*
P–00–0850	05/26/00	08/24/00	Inx International Ink Company	(G) Dispersing agent	(G) Phenol, polymer with formaldehyde, glycidyl ether, reaction products with carbomonocyclic carboxylic acid and hydroxy alkanoic acid homopolymer
P–00–0851	05/26/00	08/24/00	Bic USA Inc.	(G) A colorant for inks	(G) C.i. solvent blue 38
P–00–0852	05/26/00	08/24/00	Bic USA Inc.	(G) A colorant for inks	(G) C.i. solvent blue 38

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0853	05/26/00	08/24/00	Bic USA Inc.	(G) A colorant for inks	(G) C.i. solvent blue 37
P–00–0854	05/26/00	08/24/00	Bic USA Inc.	(G) A colorant for inks	(G) C.i. solvent blue 37
P–00–0855	05/25/00	08/23/00	CBI	(G) Open, non-dispersive use	(G) Fatty acids, $C_{16–18}$ and C_{18}-unsatd., branched and linear, polymers with an epoxy resin, C_{18}-unsatd. fatty acid dimers and triethylenetetramine
P–00–0856	05/30/00	08/28/00	CBI	(G) Open, non-dispersive use	(G) Hydroxy functional amino ester
P–00–0857	05/30/00	08/28/00	CBI	(G) Toner chemical	(G) Polyester resin
P–00–0858	05/31/00	08/29/00	Gaco Western, Inc.	(S) Single component moisture cured elastomeric waterproofing membrane	(S) 1,3-pentanediol, 2,2,4-trimethyl-, polymer with 1,3-diisocyanatomethyl- benzene, a-hydro-omega-hydroxypoly[oxy (methyl-1,2-ethanediyl)] and α,α′,α″-1,2,3-propanetriyltris [omega-hydroxy- poly[oxy(methyl-1,2-ethanediyl)]]*
P–00–0859	05/30/00	08/28/00	CBI	(G) Toner chemical	(G) Polyester resin
P–00–0860	05/31/00	08/29/00	Dow Corning Corporation	(S) Thermoplastic resin additive	(G) Alkylsiloxane-modified polyalkylene resin
P–00–0861	05/31/00	08/29/00	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties	(G) Trineoalkoxy amino zirconate
P–00–0862	05/31/00	08/29/00	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties.	(G) Tri neoalkoxy sulfonyl zirconate
P–00–0863	05/31/00	08/29/00	The P. D. George Company	(S) Electrical insulation varnish	(G) Carboxylic acid, polymer with 1,2-ethanediol, 2,5-furandione and alicyclic compound
P–00–0864	05/31/00	08/29/00	CBI	(G) Open, non-dispersive (coating resin)	(G) Urethane acrylate
P–00–0865	06/01/00	08/30/00	Dow Corning Corporation	(S) Anti-misting additive for silicone release coatings	(G) Dimethyl, methylalkyl, methylaryl siloxane
P–00–0866	06/01/00	08/30/00	Dow Corning Corporation	(S) Anti-misting additive for silicone release coatings	(G) Dimethyl, methylalkyl, methylaryl siloxane
P–00–0867	06/01/00	08/30/00	Dow Corning Corporation	(S) Anti-misting additive for silicone release coatings	(G) Dimethyl, methylalkyl, methylaryl siloxane
P–00–0868	06/01/00	08/30/00	CBI	(G) Commercial and consumer contained use in an article	(G) Pyrazolotriazole derivative
P–00–0869	06/01/00	08/30/00	3M Company	(S) Adhesive	(G) Polyurethane
P–00–0870	06/02/00	08/31/00	3M Company	(S) Chemical intermediate	(G) Acrylate terpolymer
P–00–0871	06/02/00	08/31/00	CBI	(G) Process catalyst	(G) Reaction product of halogenated arylammonium salt, alkylaluminum and substituted carbomonocyclic metal compound
P–00–0872	06/02/00	08/31/00	Dyneon LLC	(S) Fluoroelastomer for making molded parts	(G) Fluoroelastomer
P–00–0873	06/02/00	08/31/00	CBI	(G) Component of adhesives, inks, and clear varnishes	(G) Urethane acrylate
P–00–0874	06/02/00	08/31/00	CBI	(G) Component of adhesives, inks, and clear varnishes	(G) Urethane acrylate
P–00–0875	06/05/00	09/03/00	Ashland Inc.	(G) Organic foundry binder	(G) Modified phenol-formaldehyde resin
P–00–0876	06/05/00	09/03/00	Ashland Inc.	(G) Organic foundry binder	(G) Modified phenol-formaldehyde resin
P–00–0877	06/05/00	09/03/00	Ashland Inc.	(G) Organic foundry binder	(G) Modified phenol-formaldehyde resin
P–00–0878	06/05/00	09/03/00	Ashland Inc.	(G) Organic foundry binder	(G) Modified phenol-formaldehyde resin
P–00–0879	06/05/00	09/03/00	Ashland Inc.	(G) Stripper, open non-dispersive use	(G) Amide
P–00–0880	06/05/00	09/03/00	DMC–2, L.P.	(G) Intermediate chemical	(S) 1,2,3 propanetricarboxylic acid, 2-hydroxy-, bismuth(3+) salt (1:1)*
P–00–0881	06/05/00	09/03/00	Gelest, Inc.	(S) Component in resin formulation for coating glass; r+d purposes	(G) Silane ester

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0882	06/05/00	09/03/00	Gelest, Inc.	(S) Intermediate for conversion to final product research purposes	(S) Benzene, bis[(trichlorosilyl) ethyl]-*
P–00–0883	06/04/00	09/02/00	Nagase America Corporation	(G) Paper coating	(G) Reaction products of hydroxybenzoic acid and polyhydroxymethylbutane
P–00–0884	06/06/00	09/04/00	H.B. Fuller Company	(S) Prepolymer for moisture-cure adhesive	(G) Polyester polyether isocyanate polymer
P–00–0885	06/06/00	09/04/00	H.B. Fuller Company	(S) Prepolymer for moisture-cure adhesive	(G) Polyester polyether isocyanate polymer
P–00–0886	06/06/00	09/04/00	H.B. Fuller Company	(S) Moisture-cure adhesive	(G) Polyester polyether isocyanate polymer
P–00–0887	06/06/00	09/04/00	H.B. Fuller Company	(S) Moisture-cure adhesive	(G) Polyester polyether isocyanate polymer
P–00–0888	06/02/00	08/31/00	CBI	(G) Open, non-dispersive use	(G) Hydroxy functional acrylic polymer
P–00–0889	06/05/00	09/03/00	Cognis Corporation	(G) Defoaming agent	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsatd., triesters with polyethylene-polypropylene glycol ether and glycerol*
P–00–0890	06/06/00	09/04/00	CBI	(G) Resin coating	(G) Cyclohexane, 1.1′methylenebis[4-isocyanato-polymer with 2-propenoic acid, 2-hydroxyethyl ester, 2-propenoic acid, 2-methyl-monoester with 1,2-propanediol, methyl oxirane and alkanol
P–00–0891	06/05/00	09/03/00	CBI	(G) Resin coating	(G) Polyester resin
P–00–0892	06/05/00	09/03/00	CBI	(G) Resin coating	(G) Polyester resin
P–00–0893	06/05/00	09/03/00	CBI	(G) Resin coating	(G) Polyester resin
P–00–0894	06/05/00	09/03/00	H.B. Fuller Company	(S) Film laminating adhesive for packaging and converting. volumes and use pertaining to each substance of pmn seperately.	(G) Polyether polyurethane polymer
P–00–0895	06/05/00	09/03/00	H.B. Fuller Company	(S) Film laminating adhesive for packaging and converting. volumes and use pertaining to each substance of pmn seperately.	(G) Polyether polyurethane polymer
P–00–0896	06/05/00	09/03/00	H.B. Fuller Company	(S) Film laminating adhesive for packaging and converting. volume and use pertaining to each substance of pmn seperately.	(G) Polyether polyurethane polymer
P–00–0897	06/05/00	09/03/00	H.B. Fuller Company	(S) Film laminating adhesive for packaging and converting. volume and use pertaining to each substance of pmn seperately.	(G) Polyether polyurethane polymer
P–00–0898	06/05/00	09/03/00	CBI	(G) Drilling additive	(G) Amine salt
P–00–0899	06/05/00	09/03/00	CBI	(G) Industrial rubber to metal vulcanization bonding primer component for open, non-dispersive use	(G) Urea alkoxy silane
P–00–0900	06/05/00	09/03/00	CBI	(G) This site limited intermediate will be consumed in the manufacture of a multifunctional ingredient to be used in the production of complex gear lubricants, tractor hydraulic fluids, and combustion engine lubricants preparations. this intermediate has no anticipated commercial use as a product in its own right	(G) Polyalkene, sulfonated
P–00–0901	06/05/00	09/03/00	CBI	(G) The notified substance will be used as a promoter in the formation of complex gear oil lubricants, an ingredient in tractor hydraulic oil formulations which have improved frictional and water tolerance properties, and possibly as a detergent additive in formulations for combustion engine lubrication	(G) Polyalkylene sulfonate, salts
P–00–0902	06/06/00	09/04/00	CBI	(S) Curing agent for epoxy resins in adhesives and coating applications	(G) Epoxy polyamine adduct

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0903	06/07/00	09/05/00	CBI	(G) Open, non-dispersive use (polymer)	(G) Hydrogenated nitrile polymer
P–00–0904	06/05/00	09/03/00	Reichhold, Inc.	(G) Hot melt polyurethane adhesive	(G) Hot melt polyurethane adhesive
P–00–0905	06/07/00	09/05/00	CBI	(S) Brightener for electroplating	(G) Synthesis with polyamine and chloro propylene oxide, aliphatic amine polyglycol mixture
P–00–0906	06/07/00	09/05/00	CBI	(S) Component of wire enamels used in electrical industry	(G) Aromatic dicarboxylic acid polymer with 1,3-dihydro-1,3-dioxo-5-isobenzofuran-carboxylic acid and 1,1′-methylenebis[4-isocyanatobenzene]
P–00–0907	06/07/00	09/05/00	CBI	(G) Open, non-dispersive use.	(G) Hydroxy functional acrylic polymer
P–00–0908	06/07/00	09/05/00	Schill + seilacher	(S) Anti-static component of synthetic fiber spinfinishes	(S) Ethanol, 2,2′,2″-nitrilotris-, compd. with a-decyl-omega-hydroxypoly(oxy-1,2-ethanediyl) phosphate*
P–00–0909	06/07/00	09/05/00	Schill + Seilacher	(G) Component of spinfinish in textile fabrication-open non-dispersive use	(S) Poly(oxy-1,2-ethanediyl), a-decyl-omega-hydroxy-, phosphate, ammonium salt*
P–00–0910	06/08/00	09/06/00	CBI	(S) Component of wire enamels used in electrical industry	(G) Cresol-blocked isocyanate
P–00–0911	06/09/00	09/07/00	E. I. Dupont De Nemours & Company, Inc.	(G) Intermediate (closed destructive use)	(G) Perfluorinated organic peroxide
P–00–0912	06/09/00	09/07/00	CBI	(G) Synthetic resin	(G) Epoxy resin containing phosphorus
P–00–0913	06/09/00	09/07/00	CBI	(G) Colorant for non-aqueous formulations	(G) Polyalkoxylated aromatic amine tint
P–00–0914	06/12/00	09/10/00	E. I. Dupont De Nemours & Co.	(G) Polyesterification catalyst	(G) Titanium phosphinate complex
P–00–0915	06/12/00	09/10/00	Cook Composites & Polymers Co.	(S) Polymer base for marine coatings	(G) Acrylic copolymer resin
P–00–0916	06/12/00	09/10/00	CBI	(S) Adhesive to laminate two films together	(G) Toluene diisocyanate terminated polyether polyol
P–00–0917	06/13/00	09/11/00	Ciba Specialty Chemicals Corporation	(G) Textile dye	(G) Glycine, *n*-[3-(substituted)-4-[[5,6(or 6,7)-dichloro-2-benzothiazolyl]azo]phenyl]-*n*-ethyl-, ethyl ester
P–00–0918	06/14/00	09/12/00	CBI	(S) Emulsifier for binder for textile dyeing	(G) Bisphenoxypolyalkylideneglycol
P–00–0919	06/14/00	09/12/00	CBI	(S) Curing agent for epoxy resins in adhesive and coatings applications	(G) Epoxy resin adduct of cycloaliphatic amine
P–00–0920	06/14/00	09/12/00	CBI	(S) Textile finishing agent	(G) Methacrylate copolymer salt
P–00–0921	06/15/00	09/13/00	Shin-etsu Silicones of America, Inc.	(S) Ingredient for silicone grease	(G) Silane treated silica
P–00–0922	06/14/00	09/12/00	CBI	(G) Chemical intermediate used in the synthesis of pharmaceuticals	(G) Alkoxy borohydride
P–00–0923	06/14/00	09/12/00	Cytec Industries Inc.	(G) Polyurethane adhesive for bonding plastics, films, or textile materials; polyurethane binder for inks	(G) Polyurea-polyurethane dispersion
P–00–0924	06/15/00	09/13/00	CBI	(S) Drying catalyst used in formulating surface coatings and inks	(G) Strontium carboxylate
P–00–0925	06/14/00	09/12/00	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–00–0926	06/14/00	09/12/00	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–00–0927	06/14/00	09/12/00	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–00–0928	06/14/00	09/12/00	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–00–0929	06/14/00	09/12/00	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–00–0930	06/14/00	09/12/00	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–00–0931	06/19/00	09/17/00	Mitsubishi Gas Chemical Company America, Inc.	(S) Epoxy curing agent	(S) Formaldehyde, polymer with 1,3-benzenedimethanamine and 4(1,1-dimethylethyl)phenol*
P–00–0932	06/16/00	09/14/00	Elf Atochem North America, Inc.	(G) Intermediate for commercial peroxide products	(S) Hydroperoxide, 1,1-dimethylethyl, sodium salt*

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0933	06/16/00	09/14/00	Elf Atochem North America, Inc.	(G) Intermediate foe commercial peroxide products	(S) Hydroperoxide, 1,1-dimethylethyl, potassium salt*
P–00–0934	06/16/00	09/14/00	Elf Atochem North America, Inc.	(G) Intermediate foe commercial peroxide products	(S) Hydroperoxide, 1,1-dimethylpropyl, sodium salt*
P–00–0935	06/16/00	09/14/00	Elf Atochem North America, Inc.	(G) Intermediate foe commercial peroxide products	(S) Hydroperoxide, 1,1-dimethylpropyl, potassium salt*
P–00–0936	06/16/00	09/14/00	Palmer International, Inc.	(S) Resin modifier for ink; resin modifier for adhesives; plasticizer for paints and coatings	(G) Phenolic modified polymer or resin
P–00–0937	06/19/00	09/17/00	CBI	(G) Urethane resin for the coatings and adhesive industry	(G) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, polymer with 1,1′-methylenebis[4-isocyanatocyclohexane], and an aliphatic alcohol
P–00–0938	06/19/00	09/17/00	CBI	(G) Open, non-dispersive (resin)	(G) Blocked polyisocyanate
P–00–0939	06/19/00	09/17/00	CBI	(G) Adhesive for Flexible Substrates	(G) Polyester polyurethane
P–00–0940	06/19/00	09/17/00	Xerox Corp.	(G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers	(G) Polyamide resin
P–00–0941	06/19/00	09/17/00	Xerox Corp.	(G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers	(G) Aliphatic urethane
P–00–0942	06/19/00	09/17/00	CBI	(G) Lubricant additive, contained use	(G) Alkylated naphthylamine
P–00–0943	06/19/00	09/17/00	CBI	(G) Component of coating with open use	(G) Aqueous polyurethane
P–00–0944	06/19/00	09/17/00	CBI	(G) Component of coating with open use	(G) Aqueous polyurethane
P–00–0945	06/19/00	09/17/00	CBI	(G) Component of coating with open use	(G) Aqueous polyurethane
P–00–0946	06/19/00	09/17/00	CBI	(G) Component of coating with open use	(G) Aqueous polyurethane
P–00–0947	06/19/00	09/17/00	CBI	(G) Component of coating with open use	(G) Aqueous polyurethane
P–00–0948	06/20/00	09/18/00	CBI	(G) Binder for architectural coatings	(G) Coconut fatty acid polyester
P–00–0949	06/20/00	09/18/00	CBI	(G) Ingredient for use in consumer products: highly dispersive use	(G) Alkoxy alkylmercaptan
P–00–0950	06/21/00	09/19/00	Rhodia, Inc./Formerly Albright & Wilson	(S) Adhesion promotor, corrosion inhib. & wetting agent for metal surfaces; adhesion promotor and corrosion inhibitor for paints and coatings; adhesion promotor, coupling agent for minerals and pigments; set retarder for oilfied cements	(S) 2-propenoic acid, polymer with ethenylphosphonic acid*
P–00–0951	06/20/00	09/18/00	CBI	(G) Protective industrial coating	(G) Fatty acid modified polyester
P–00–0952	06/20/00	09/18/00	H.B. Fuller Company	(S) Moisture-curing for profile laminating	(G) Polyester polyurethane prepolymer
P–00–0953	06/20/00	09/18/00	H.B. Fuller Company	(S) Moisture-curing for profile laminating	(G) Polyester polyurethane prepolymer
P–00–0954	06/20/00	09/18/00	H.B. Fuller Company	(S) Moisture-curing for profile laminating	(G) Polyester polyurethane prepolymer
P–00–0955	06/20/00	09/18/00	H.B. Fuller Company	(S) Moisture-curing for profile laminating	(G) Polyester polyurethane prepolymer
P–00–0956	06/20/00	09/18/00	H.B. Fuller company	(S) Film laminating adhesive for packaging and converting.	(G) Polyester polyurethane prepolymer
P–00–0957	06/20/00	09/18/00	H.B. Fuller Company	(S) Film laminating adhesive for packaging and converting.	(G) Polyester polyurethane prepolymer
P–00–0958	06/22/00	09/20/00	CBI	(G) Industrial fillers	(G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica
P–00–0959	06/22/00	09/20/00	CBI	(G) Industrial fillers	(G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica
P–00–0960	06/22/00	09/20/00	Xerox Corp.	(G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers.	(G) Polyakyleneoxy aliphatic urethane
P–00–0961	06/22/00	09/20/00	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic polyisocyanate
P–00–0962	06/23/00	09/21/00	H.B. Fuller Company	(S) Moisture-cure laminating adhesive	(G) Polyester polyurethane prepolymer
P–00–0963	06/23/00	09/21/00	H.B. Fuller Company	(S) Moisture-cure laminating adhesive	(G) Polyester polyurethane prepolymer

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0964	06/23/00	09/21/00	H.B. Fuller Company	(S) Moisture-cure laminating adhesive	(G) Polyester polyurethane prepolymer
P–00–0965	06/23/00	09/21/00	H.B. Fuller Company	(S) Moisture-cure laminating adhesive	(G) Polyester polyurethane prepolymer
P–00–0966	06/22/00	09/20/00	Archimica Inc.	(S) Agricultural product intermediate	(G) Haloarylalkylketoester
P–00–0985	06/21/00	09/19/00	CBI	(S) Laminating adhesive	(G) Aliphatic polyether polyurethane

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 50 NOTICES OF COMMENCEMENT FROM: 05/22/00 TO 06/23/00

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0015	06/14/00	06/10/00	(G) Polyoxyalkylene polyester urethane block polymer, salt with phosphorylated polyester
P–00–0038	06/12/00	05/22/00	(G) Urethane acrylate
P–00–0199	06/19/00	06/12/00	(S) Siloxanes and silicones, di-me, hydroxy-terminated, polymers with silicic acid*
P–00–0302	06/13/00	05/04/00	(S) Poly(oxy-1,2-ethanediyl),.alpha., .alpha.′, .alpha.″, .alpha.‴-[1,6-hexanediylbis[(methylnitrilio)di-2,1-ethanediyl)] tetrakis [.omega.-hydroxy-, bis(methyl sulfate) (salt)*
P–00–0317	05/22/00	05/02/00	(G) Amino-functional siloxane
P–00–0333	05/25/00	04/28/00	(G) Salt of an acrylate copolymer
P–00–0344	06/12/00	05/11/00	(G) Mixed polyol-glycerol fatty aid ester
P–00–0354	06/23/00	06/02/00	(G) Polyester-polyvinyl modified mdi-based polyurethane
P–00–0359	05/23/00	04/15/00	(G) Alkylnaphthalenesulfonic acid
P–00–0362	06/13/00	05/15/00	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polyether polyols, a polyester polyol, and a modified polyvinyl copolymer
P–00–0410	06/14/00	05/03/00	(G) Calcium fatty acid complex.
P–00–0431	05/25/00	05/15/00	(G) Substituted alicyclic alkenyl benz[e]indolium salt
P–00–0435	05/24/00	05/09/00	(G) Aminoalkyl polydimethylsiloxane
P–00–0463	06/12/00	05/17/00	(G) Metal salt
P–00–0493	06/19/00	05/26/00	(G) Hydroxy-functional solution acrylic
P–00–0512	06/08/00	05/22/00	(G) Mixed ammonium/sodium salt of naphthalene azo dyestuff
P–00–0541	06/19/00	05/28/00	(G) Chloro nitro phenyl ether
P–00–0583	06/15/00	06/13/00	(S) 1-butanaminium, *n,n,n*-tributyl-, hexafluorophosphate(1-)*
P–94–0339	06/12/00	05/30/00	(S) Isopropylmagnesium bromide*
P–94–0899	06/09/00	06/01/00	(S) 2-decyltetradecanoic acid*
P–95–0169	06/21/00	06/03/00	(S) Morpholine, 4-(1-oxo-2-propenyl)-*
P–95–1050	05/26/00	01/04/00	(G) Modified cationic acrylamide polymer
P–95–1072	05/26/00	03/24/00	(G) A magnesium, titanium organo-complex compound
P–95–1215	06/15/00	05/19/00	(G) Polyester urethane polymer
P–96–0192	05/30/00	04/26/00	(G) Dihydropyrrol-2-ylidene derivative
P–96–1406	06/05/00	11/19/99	(G) Aminoalkyl-functional alkoxysilane
P–96–1494	06/08/00	05/11/00	(G) Silyl phoshonate
P–96–1495	06/08/00	05/11/00	(G) Silyl phoshonate
P–97–0116	06/13/00	03/05/97	(G) Phthalate-containing polyester polymer
P–98–0040	05/23/00	02/25/00	(S) Residues (petroleum), polycyclic arom, hydrocarbon-rich catalytic cracking, polymers with formaldehyde and phenol*
P–98–0082	06/19/00	06/01/00	(G) Reactive acrylate
P–98–0083	06/19/00	05/27/00	(G) Reactive acrylate
P–98–0084	06/19/00	06/02/00	(G) Reactive acrylate
P–98–0257	06/12/00	05/24/00	(G) Sodium poly (hydroxyalkyl carboxyalkyl acrylamido sulphate)
P–98–0398	05/25/00	05/09/00	(G) Substituted benzophenone
P–98–0646	05/26/00	05/11/00	(S) Benzene, ethenyl-, polymer with ethene and 1-propene
P–98–0916	06/12/00	05/23/00	(S) Poly(oxy-1,2-ethanediyl), alpha-(phenylmethyl)-omega-hydroxy-*
P–99–0425	06/19/00	05/18/00	(G) Polymer of an alkyl phosphate ester, phosphorus pentoxide and an alkyl oxide
P–99–0480	06/09/00	05/23/00	(G) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,3-bis (1-isocyanato-1-methylethyl) benzene, diamine, a-hydro-omega-hydroxypoly (oxy-1,4-butanediyl) and 2-methyl-1,3-propanediol, ammonium salt, polyethylene-polypropylene glycol 2-aminopropyl me ether blocked*
P–99–0543	06/19/00	06/09/00	(G) Alkali salt of polyalkylene glycol

II. 50 NOTICES OF COMMENCEMENT FROM: 05/22/00 TO 06/23/00—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–99–0680	06/22/00	05/25/00	(S) 1,3-isobenzofurandione, polymer with (chloromethyl)oxirane and 4,4′-(1-methylethylidene)bis[phenol], ester with 2-oxepanone homopolymer 2-[(1-oxo-2-propenyl)oxy)ethyl ester*
P–99–0853	05/23/00	05/16/00	(G) Polyester
P–99–0875	05/25/00	10/19/99	(G) Methylenebis[isocyanatobenzene], polymer with alkanepolyols, dimethyl terephthalate, benzenepolycarboxylic acid and alkanepolycarboxylic acids
P–99–1060	06/15/00	05/29/00	(G) Polyoxyalkylene ether
P–99–1202	06/05/00	05/02/00	(G) Sulfonyl azide intermediate
P–99–1226	05/30/00	05/14/00	(G) Substituted benzoyl chloride
P–99–1321	05/22/00	05/02/00	(G) Vegetable oil, chlorosulfurized
P–99–1329	05/22/00	05/02/00	(G) Vegetable oil, sulfurized
P–99–1335	06/12/00	06/01/00	(G) Blocked isocyanate
P–99–1373	06/09/00	06/06/00	(S) 2-butendioic acid, (2*z*)-, mono[2- [(2-methyl-1-oxo-2 propenyl)oxy]ethyl]ester*

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 27, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–21200 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 20, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0531.

Title: Local Multipoint Distribution Service (LMDS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 986.

Estimated Time Per Response: .25 hours to 20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 30,423 hours.

Total Annual Cost: $2,025,400.

Needs and Uses: The information requested is used by FCC staff to determine the technical, legal and other qualifications of applicants to operate stations in the Local Multipoint Distribution Service (LMDS). The rule sections containing information collection requirements are 47 CFR 101.103, 47 CFR 101.305, and 101.1011.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–21137 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 20, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th St., SW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0246.

Title: Section 74.452 Equipment Changes.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 25.

Estimated Time Per Response: .5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 13 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 74.452 requires that licensees of remote pickup stations notify the Commission of any equipment changes that are deemed desirable or necessary (without departing from its station authorization) upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

OMB Control Number: 3060–0254.

Title: Section 74.433 Temporary Authorizations.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 12.

Estimated Time Per Response: 1.25 hours (0.25 hours per respondent, 1 hour per attorney).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3 hours.

Total Annual Cost: $4,000.

Needs and Uses: Section 74.433 requires that a licensee of a remote pickup station make an informal written request to the FCC when requesting temporary authorization for operations of a temporary nature that cannot be conducted in accordance with Section 74.24. The data is used by FCC staff to insure that the temporary operation of a remote pickup station will not cause interference to existing stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–21136 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1877]

Common Carrier Bureau and NARUC; Industry Forum on Implementation of Slamming Liability Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: This document announces that the Federal Communications Commission's Common Carrier Bureau and the National Association of Regulatory Utility Commissioners' (NARUC) Committee on Consumer Affairs will jointly host an industry forum to discuss implementation of the Commission's slamming liability rules and procedures.

DATES: Wednesday, August 23, 2000 from 9:30 a.m. to 12 noon.

ADDRESSES: Federal Communications Commission 445 12th St., SW., Room TW–C305 (Commission Meeting Room).

FOR FURTHER INFORMATION CONTACT: Michele Walters, 202–418–7400, *mwalters@fcc.gov*; Bev DeMello, 850–413–6107, *bdemello@psc.state.fl.us*; or William Cox, 202–418–7400, *wcox@fcc.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the industry forum is to discuss implementation of the Commission's new slamming liability rules and procedures adopted in *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94–129, First Order on Reconsideration, FCC 00–135 (released May 3, 2000), 65 FR 47678 (August 3, 2000). The industry forum is an outgrowth of the state-industry working group established by NARUC's Committee on Consumer Affairs to address the implementation of this order. Representatives of the Commission's Common Carrier Bureau and NARUC's Committee on Consumer Affairs, as well as representatives of the Commission's Consumer Information and Enforcement Bureaus, will be on hand to discuss industry questions about the implementation of the slamming liability rules and procedures.

Industry representatives and members of the public may attend the industry forum. Admittance will be limited to the seating available. Persons planning to attend the industry forum should notify one of the contacts listed above. A videotape of the meeting will be filed in CC Docket No. 94–129.

Dated: August 16, 2000.

Federal Communications Commission.

Yog Varma,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 00–21372 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: State Administrative Plan for the Hazard Mitigation Grant Program.

Type of Information Collection: Reinstatement, with change of a previously approved collection for which approval has expired.

OMB Number: 3067–0208.

Abstract: States must develop a plan for the administration of the hazard mitigation grants made by FEMA under the provision of Section 404 of the Robert T. Stafford Disaster Relief Act. The plan is needed to be eligible to receive funds under the Hazard Mitigation Grant Program, following a Presidentially declared disaster or emergency.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 16.

Estimated Time per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 205.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on

the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Dated: August 10, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–21177 Filed 8–18–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Approval Coordination of Requirements to use the NETC for Extracurricular Training Activities.

Type of Information Collection: Reinstatement, with change of a previously approved collection for which approval has expired.

OMB Number: 3067–0219.

Abstract: Data will be obtained from special groups that request to use the NETC facilities for extracurricular training activities. Extracurricular training is training over the above regularly scheduled training sessions of the National Fire Academy (NFA) and Emergency Management Institute (EMI). The policy of the NETC is to accommodate other training activities on a space-available basis on the Emmitsburg campus. In order for the NETC to approve and schedule the use of its facilities, information must be provided from special group organizations. A written, email or telephone request for use of NETC facilities is initially made to determine availability of the facilities.

Affected Public: Not-for-profit institutions, Federal Government, State, Local or Tribal Government, individuals or households, business or other for-profit.

Number of Respondents: 1200.

Estimated Time per Respondent: FEMA Form 75–10, 6 minutes; FEMA Form 75–11, 12 minutes.

Estimated Total Annual Burden Hours: 130 hours.

Frequency of Response: Annually.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: August 7, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–21178 Filed 8–18–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

North Dakota; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota FEMA–1334–DR, dated June 27, 2000, and related determinations.

EFFECTIVE DATE: August 8, 2000

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Indian Reservation of the Three Affiliated Tribes for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–21180 Filed 8–18–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

Juneau County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family

Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–21179 Filed 8–18–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

Public Workshop: Identity Theft Victim Assistance

AGENCY: Federal Trade Commission.

ACTION: Initial notice requesting public comment and announcing public workshop.

SUMMARY: The Federal Trade Commission (the ''FTC''), will hold a public workshop to identify relevant issues and examine potential solutions associated with assisting victims of identity theft. This Notice is also seeking public comments to inform the discussion that will take place at the workshop. This workshop will be the first in a series following the National Summit on Identity Theft last March. At that event, government, industry, and consumer advocates committed to work together to combat identity theft. Later sessions will be convened on the topics of law enforcement and prevention.

DATES: Written comments and requests to participate as a panelist in the workshop must be submitted on or before September 15, 2000. The workshop will be held on October 23, 2000, at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDRESSES: Mail written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUBMISSION OF DOCUMENTS: Comments should be captioned ''Identity Theft Victim Assistance Workshop.'' To enable prompt review and public access, paper submissions should include three copies and a version on diskette in ASCII, WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. As an alternative to paper submissions, you may email comments to: idtworkshop@ftc.gov. Messages to that address will receive a reply in acknowledgment. Comments submitted in electronic form should be in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552 and Commission regulations, 16 CFR part 4.9 on normal business days between the hours of 8:30 a.m. and 5 p.m. at 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC will make this notice, and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at *www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Joanna Crane, Federal Trade Commission, phone: (202) 326–3258, email: *jcrane@ftc.gov*; or Helen Foster, Federal Trade Commission, (202) 326–2343, email: *hfoster@ftc.gov*.

SUPPLEMENTARY INFORMATION:

Section A. Background

The Identity Theft and Assumption Deterrence Act of 1998 directed the Federal Trade Commission to implement a comprehensive program to educate consumers and businesses about the crime of identity theft and to assist identity theft victims. Consumer-victims of identity theft currently face multiple hurdles in preventing further misuse of their identifying information and in correcting damage done to their credit histories, reputations and lives by identity thieves. These consumers often spend many hours over the course of months calling and writing to creditors, credit bureaus, debt collectors and others in an attempt to undo the damage caused by identity theft. Their struggle is made all the more difficult by differing and cumbersome dispute processes used by multiple creditors, credit bureaus and law enforcement agencies.

Section B. Public Forum

The Federal Trade Commission will hold a public workshop to examine existing consumer-victim assistance mechanisms and proposals for expanding and improving those processes. The workshop seeks to foster an open discussion of how industry, law enforcement, and government can work cooperatively to provide streamlined and coordinated assistance to consumer-victims of identity theft without unnecessarily burdening business. The workshop aims to explore consumer-victim assistance by creditors, consumer reporting agencies, debt collectors, and federal, state, and local government agencies. The Federal Trade Commission seeks a balanced discussion about how these entities might work together to assist consumer-victims of identity theft without sacrificing the accuracy or security of fraud investigations.

Last March, the United States Department of the Treasury, in conjunction with the Federal Trade Commission and other federal agencies, convened a National Identity Theft Summit, which sought to facilitate an ongoing dialogue on how government and industry could work together to investigate and prosecute identity theft as well as remediate the impact of identity theft on victims. Many participants at the Summit agreed that uniformity in the processing of victim disputes was one method of minimizing the burden on consumer-victims of identity theft. These participants suggested that the adoption of a single consumer affidavit form that would be acceptable to multiple creditors and credit bureaus would reduce victims' burdens. Similarly, some participants advocated a system which would allow a consumer-victim to place a single call to have a fraud alert placed upon their credit report at all three of the major national consumer reporting agencies. This workshop will explore these initiatives, as well as additional or alternative methods of assisting consumer-victims of identity theft.

To inform the FTC prior to the workshop, the agency seeks views and additional information on this subject from industry, consumer representatives, the academic community and the larger public in the United States, including views on the elements of fair and effective methods of assisting victims and repairing the damage caused by identity theft. Views are welcome on any aspect of this subject, though the following broad topics and possible subtopics are offered to help organize the comments:

Victim Assistance

(1) Identity theft victim assistance by consumer reporting agencies or credit bureaus.

(2) Identity theft victim assistance by banks, credit card issuers and other creditors, and debt collectors.

(3) Identity theft victim assistance by the communications industry (including local and long-distance telephone carriers and cellular service providers).

(4) Identity theft victim assistance by Internet e-merchants (including banks, credit card issuers, communications services providers and other creditors).

(5) The handling of identity theft complaints by law enforcement agencies.

Remediation

(6) Remediation of a fraudulent arrest/conviction record due to identity theft.

(7) Remediation of a fraudulent bankruptcy due to identity theft.

Possible Subtopics

(8) What can be done to respond to other harms (*e.g.*, denial of employment, insurance, or mortgage) due to identity theft?

(9) What are some ''best practices'' that have been adopted in the customer service area for identity theft victims?

(10) How can the process by which identity theft victims clear their names be streamlined? Can the requirements be made more uniform? For example, is the use of a standardized fraud affidavit by creditors a possible solution? Is a centralized reporting process a practical option? Are there other ways to minimize the paperwork burden and/or the number of phone calls consumers have to make?

(11) Would making the process of clearing one's name less burdensome on victims also facilitate fraud? How do we distinguish between victims and perpetrators?

(12) How can we ensure that ''fraud alerts'' on credit reports are seen and honored by credit grantors, so as to reduce the likelihood of future harm to the victim?

Section C. Request To Participate

The FTC invites members of the public, industry, and other interested parties to participate as a panelist in the workshop. To be eligible to participate, you must file a request to participate by September 15, 2000. If the number of parties who request to participate in the workshop is so large that including all requestors would inhibit effective discussion among participants, staff of the FTC will select as participants a limited number of parties to represent the relevant interests. Selection will be based on the following criteria:

(1) The party submitted a request to participate by September 15, 2000.

(2) The party's participation would promote the representation of a balance of interests at the workshop.

(3) The party's participation would promote the consideration and discussion of the issues presented in the workshop.

(4) The party has expertise in issues raised in the workshop.

(5) The party adequately reflects the view of the affected interests which it purports to represent.

If it is necessary to limit the number of participants, those who requested to participate but were not selected will be afforded an opportunity, if at all possible, to present statements during a limited time period at the end of the session. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements. Requestors will be notified as soon as possible after September 15, 2000, if they have been selected to participate.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–21186 Filed 8–18–00; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—07/24/2000			
20004052	Liz Claiborne, Inc	The Chase Manhattan Corporation	The Monet Group, Inc.
20004071	MAN Aktiengesellschaft	Vodafone Air Touch Plc	Mannesmann Pipe & Steel Corporation.
20004075	Cordiant Communications Group plc	Donino, White & Partners, Inc	Donino, White & Partners, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/25/2000			
20003893	Cardinal Health, Inc	Bergen Brunswig Corporation	Bergen Brunswig Medical Corporation.
20003947	Waters Corporation	Variagencies, Inc	Variagencies, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/26/2000			
20004072	The Hartford Financial Services Group, Inc.	Reliance Group Holdings, Inc	Reliance Group Holdings, Inc.
20004130	Deutsche Bank AG	NationsRent, Inc	NationsRent, Inc.
20004131	J.P. Morgan & Co. Incorporated	NationsRent, Inc	NationsRent, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/27/2000			
20003861	Molecular Devices Corporation	LJL BioSystems, Inc	LJL BioSystems, Inc.
20003862	Lev and Galina Leytes	Molecular Devices Corporation	Molecular Devices Corporation.
20003878	Global Technologies, Ltd	Litton Industries, Inc	Litton Industries, Inc.
20003889	Valeo S.A	Robert Bosch Industrietreuhand KG	Robert Bosch GmbH, Zexel Corporation.
20003964	Cisco Systems, Inc	Pirelli S.p.A	Optical Technologies USA Corp.

Trans No.	Acquiring	Acquired	Entities
20003966	Richard R. Rogers	Marketing Specialists Corporation	Marketing Specialists Corporation.
20004024	Applied Digital Solutions, Inc	Computer Equity Corporation	Computer Equity Corporation.
20004033	Hicks, Muse, Tate & Furst Europe Fund, L.P.	Viatel, Inc	Viatel, Inc.
20004039	Mitel Corporation	Vertex Networks, Incorporated	Vertex Networks, Incorporated.
20004055	Oak Hill Capital Partners, L.P	IPWireless, Inc	IPWireless, Inc.
20004062	Northern States Power Company	Den norske stats oljeselskap a.s	First State Power Management, Inc. Statoil Energy Power Generation, Inc.
20004064	PowerGen plc	LG&E Energy Corp	LG&E Energy Corp.
20004065	Cox Enterprises, Inc	Robert N. Smith	Smith Acquisition Company.
20004067	Cox Enterprises, Inc	Hicks, Muse, Tate & Furst Equity Fund III, LP.	WJAC, Incorporated.
20004074	Johnson Controls, Inc	Ikeda Bussan Co., Ltd	Ikeda Bussan Co., Ltd.
20004076	Unaxis Holding AG	Mr. Karl Nicklaus	ESEC Holding SA.
20004083	DDi Corp	Cornerstone Equity Investors IV, L.P	Automata International, Inc.
20004084	Financial Holding Corporation	Fremont General Corporation	Fremont Investment & Loan. Fremont Premier Finance Corporation.
20004085	El Paso Energy Partners, L.P	El Paso Energy Corporation	Crystal Holdings, Inc.
20004086	A. Ahlstrom Corporation	Dexter Corporation	Dexter Corporation. Dexter International Corporation. Windsor Locks Canal Company.
20004087	Old Mutual PLC	United Asset Management Corporation	United Asset Management Corporation.
20004088	Newmont Mining Corporation	Battle Mountain Gold Company	Battle Mountain Gold Company.
20004091	Pearson plc	Washington Post Company (The)	Score Learning, Inc.
20004092	WinsLoew Furniture, Inc	Arnold Bertram	Charter Furniture Corporation.
20004093	WinsLoew Furniture, Inc	James Pepping	Charter Furniture Corporation.
20004094	Delta Galil Industries, Ltd	Innerwear Ventures Ltd	Wundies Industries, Inc.
20004095	Paul G. Allen	iMotors.com, Inc	iMotors.com, Inc.
20004096	Aether Systems, Inc	Novatel Wireless, Inc	Novatel Wireless, Inc.
20004097	Cornerstone Equity Investors IV, L.P	Novatel Wireless, Inc	Novatel Wireless, Inc.
20004098	Plassein Packaging Corporation	Bank of America Corporation	Rex International, Inc.
20004100	Coventry Health, Inc	Duke University	WellPath Community Health Plans, LLC.
20004102	Richard L. Duchossois	Anthony Gartland	General Clutch Corp.
20004105	Crescendo IV, L.P	Telegis Networks, Inc	Telegis Networks, Inc.
20004125	Industrial Growth Partners, L.P	The Felters Company	The Felters Company.
20004139	Associated Freezers Income Trust	Patrick A. Gouveia	Atlas Cold Storage Holdings Limited.
20004149	Vivendi, S.A	Vivendi, S.A	Advanced Environmental Services, LLC.

TRANSACTIONS GRANTED EARLY TERMINATION—07/28/2000

20003268	Entravision Communications Corporation.	Amador S. Bustos	Z-Spanish Media Corporation.
20003894	Pulitzer Voting Trust	Warburg, Pincus Capital Company, L.P	Warburg, Pincus Capital Company, L.P.
20003938	Marmon Holdings, Inc	Delta plc	Delta plc.
20003968	ContiGroup Companies, Inc	The Lundy Package Company	The Lundy Package Company.
20004046	Reinhard Mohn	Bernard A. Goldhirsh	Goldhirsh Group, Inc.
20004047	Dick Olson	Agribio Tech, Inc	Agribio Tech, Inc.
20004063	HMTF Equity Fund IV (1999), L.P	Rhythms NetConnections Inc	Rhythms NetConnections Inc.
20004070	Cablevision Systems Corporation	Advance Voting Trust	News 12 New Jersey L.L.C.
20004077	Edward C. Levy, Jr., and Julie Levy	James R. Foley	Michigan Foundation Company, Inc.
20004078	Edward C. Levy, Jr., and Julie Levy	William J. Foley	Michigan Foundation Company, Inc.
20004080	Everett R. Dobson Irrevocable Family Trust.	Pioneer Telephone Cooperative, Inc	Pioneer Telephone Cooperative, Inc.
20004112	Horizon Beverage Group, Inc	James L. Abramson	Capital Distributing Company, Inc.
20004114	The SKM Equity Fund II, L.P	Walter E. Kalberer	WEK Industries, Inc.
20004116	EQT Scandinavia Limited	CSI Control Systems International, Inc	CSI Control Systems International, Inc.
20004119	Alon Israel Oil Company, Ltd	Total Fina Elf S.A	American Petrofina Pipe Line Co., Fin-Tex Pipe Line Co.
20004121	Vitesse Semiconductor Corporation	Koninklijke Philips Electronics N.V	Philips Semiconductor, Inc.
20004123	Royal Bank of Canada	The Liberty Corporation	The Liberty Corporation.
20004126	Peter Kiewit Sons', Inc	Fort Calhoun Stone Company	Fort Calhoun Store Company.
20004127	Unicom Corporation	William N. Neiheiser	Reliance Mechanical Corp.
20004129	Performance Food Group Company	Carroll County Foods, Inc	Carroll County Foods, Inc.
20004133	Wisconsin Energy Corporation	Ann Palmer	Park International Corp.
20004137	Merrill Lynch & Co., Inc	Merck & Co., Inc	MCCO Corporation.
20004156	William L. Wallace	AutoNation, Inc	Stuart Lincoln-Mercury, Inc.
20004195	Wells Fargo & Company	First Union Corporation	First Union Mortgage Corporation.
20004199	EGL, Inc	Circle International Group, Inc	Circle International Group, Inc.
20004208	Gerald Schwartz	Bull SA	Bull Electronics, Inc.

Trans No.	Acquiring	Acquired	Entities
TRANACTIONS GRANTED EARLY TERMINATION—07/31/2000			
20004021	Texas Instruments Incorporated	Burr-Brown Corporation	Burr-Brown Corporation.
20004056	David S. Smith	PSI Holding, L.L.C	PSI Holding, L.L.C.
20004115	Bowater Incorporated	General Electric Company	Newsprint South, Inc.
20004136	Mine Safety Appliances Company	William T. McCutcheon	Cairns & Brother, Inc.
20004140	Land O'Lakes, Inc	AgriBioTech, Inc	AgriBioTech, Inc.
20004142	Media Metrix, Inc	Jupiter Communications, Inc	Jupiter Communications, Inc.
20004143	Lincolnshire Equity Fund II, L.P	Alan Van Vliet	Unified Precious Metals, Inc.
20004150	HMTF Bridge Partners, L.P	Vectrix Corporation	Vectrix Corporation.
20004151	PwC Global Investments B.V	PwC Global Investments B.V	PwCS Holdings, Inc.
20004152	Lincolnshire Equity Fund II, L.P	Timothy R. Fallon	Fallon Luminous Products Corporation.
20004155	Roland Siegfried Hinz and Lita Sullivan Hinz.	Salem Communications Corporation	Salem Communications Corporation.
20004158	Microsoft Corporation	Michael S. Edell	eLabor.com, Inc.
20004159	Thayer Equity Investors IV, L.P	EFTC Corporation	EFTC Corporation.
20004160	Forstmann Little & Co. Equity Partnership VI.	Forstmann Little & Co. Equity Partnership V, L.P.	Intelisys Electronic Commerce, Inc.
20004161	Centennial Fund VI, L.P	Agilera.com, Inc	Agilera.com, Inc.
20004162	PMC-Sierra, Inc	Quantum Effect Devices, Inc	Quantum Effect Devices, Inc.
20004166	SCI Systems, Inc	OMX, Inc	OMX, Inc.
20004167	Marathon Fund Limited Partnership IV	International Utility Structures Inc	IUS Holdings Inc.
20004170	William Clay Ford	Ford Motor Company	Ford Motor Company.
20004171	William Clay Ford, Jr.	Ford Motor Company	Ford Motor Company.
20004178	Forest Laboratories, Inc	Merz + Co. GmbH & Co	Merz + Co. GmbH & Co.
20004251	Ford Motor Company	Paul Bailey	Paul Bailey's Ford, Inc.
TRANACTIONS GRANTED EARLY TERMINATION—08/01/2000			
20001126	Allied Waste Industries, Inc	Waste Management, Inc	Cocopah Landfill, Inc. Copper Mountain Landfill, Inc. Local Sanitation of Rowan County, LLC. TransAmerican Waste Industries, Inc. USA Waste of Kentucky, LLC. Waste Management of Kansas, Inc. Waste Management of Mississippi, Inc. Waste Management of Missouri, Inc. Waste Management of Ohio, Inc. Waste Management of South Carolina, Inc. Waste Management of Kentucky, LLC.
20004172	Edsel B. Ford, II	Ford Motor Company	Ford Motor Company.
20004177	Allianz Aktiengesellschaft	E.ON Aktiengesellschaft	Schmalbach-Lubeca Aktiengesellschaft.
20004180	Swisslog Holding AG	Kewill Systems Plc	Kewill Logistics, Inc.
20004182	Cortec Group Fund III, L.P	Axia Group, Inc	Axia Group, Inc.
20004183	Reliance Steel & Aluminum Co	United Alloys, Inc	United Alloys, Inc.
20004186	Kleiner Perkins Caufield & Byers IX–A, L.P.	Auto Trader.com, Inc	Auto Trader.com, Inc.
20004187	Cox Enterprises, Inc	Auto Trader.com, Inc	Auto Trader.com, Inc.
20004192	Schering-Plough Corporation	Novartis AG	Novartis Pharmaceuticals Corporation.
20004198	Worldwide Sports & Recreation, Inc	Serengeti Eyewear, Inc	Serengeti Eyewear, Inc.
20004200	The Interpublic Group of Companies, Inc.	The Interpublic Group of Companies, Inc.	Goldberg Moser O'Neill LLC.
20004202	Warburg, Pincus, Equity Partners, L.P	Dime Bancorp, Inc	Dime Bancorp, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—08/02/2000			
20004006	Sempra Energy	Conectiv	Atlantic-Pacific Las Vegas, L.L.C.
20004050	USA Digital Radio, Inc	Lucent Technologies, Inc	Lucent Digital Radio.
20004051	Lucent Technologies, Inc	USA Digital Radio, Inc	USA Digital Radio, Inc.
20004107	Morgan Stanley Dean Witter Venture Partners IV, L.P.	eOnline, Inc	eOnline, Inc.
20004134	Health Care Service Corporation, a Mutual Legal Reserve Co.	MetLife, Inc	GenAm Benefits Insurance Company.
20004157	Baker Communications Fund II (QP), LP.	Broadview Networks Holdings, Inc	Broadview Networks Holdings, Inc.
20004173	Wells Fargo & Company	First Security Corporation	First Security Corporation.
20004179	Deutsche Bank AG	Vivendi S.A	Clean Room Technologies, Inc. FTS Systems, Inc. Reinhold Faeth GmbH. The Kinetics Group, Inc. W.H.E. Biosystems.
20004185	General Electric Company	The Laughton Estate Trust	Columbia Communications Corporation.

Trans No.	Acquiring	Acquired	Entities
20004188	Landmark Communications, Inc	Auto Trader.com, Inc	Auto Trader.com, Inc.
20004189	Automatic Data Processing, Inc	Auto Trader.com, Inc	Auto Trader.com, Inc.
20004197	John Rutledge Partners II, L.P	The Crom Corporation	The Crom Corporation.
20004207	CMGI, Inc	Industria Solutions, Inc	Industria Solutions, Inc.
20004209	HSBC Holdings plc	BBA Group plc	BBA Friction, Inc.
20004214	Clear Channel Communications, Inc	Triumph Taxi Outdoor, LLC	Triumph Taxi Advertising, LLC.
20004216	UMECO plc	M.A. Hanna Company	RA Products, Inc.
20004217	Providence Equity Partners, III, LP	Great Hill Equity Partners, L.P	ManagedStorage International, Inc.
20004219	John H. Harland Company	Concentrex Incorporated	Concentrex Incorporated.
20004220	Silver Lake Partners, L.P	Cabletron Systems, Inc	Cabletron Systems, Inc.
20004233	SR. Teleperformance	Joanne Russell	Universal Teleservices Arizona; Universal Teleservices F. Corp.
20004241	Fremont Partners, L.P	Resun Leasing, Inc	Resun Leasing, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—08/04/2000

20004049	Celgene Corporation	Signal Pharmaceuticals, Inc	Signal Pharmaceuticals, Inc.
20004060	Crosspoint Venture Partners 1997, L.P	Covad Communications Group, Inc	Covad Communications Group, Inc.
20004061	Crosspoint Venture Partners L.S. 1999 L.P.	Covad Communications Group, Inc	Covad Communications Group, Inc.
20004113	Irish Dairy Board Co-operative, Ltd	Frederick R. Charley	Eurobest Foods Corporation.
20004117	Nestle S.A	Bayer AG	Bayer AG.
20004174	Suez Lyonnaise des Eaux	Cabot Corporation	Cabot LNG Business Trust.
20004191	Datatec Limited	Jack Friedman	CAA Technologies, Inc.
20004203	Andrew J. McKelvey	Affiliated Computer Services, Inc	ACS Technology Solutions, Inc.
20004211	APAX Excelsior VI, LP	Life Time Fitness, Inc	Life Time Fitness, Inc.
20004215	ING Groep N.V	ReliaStar Financial Corp	ReliaStar Financial Corp.
20004226	Digital Island, Inc	SoftAware, Inc	SoftAware, Inc.
20004230	Proha Plc	Alec E. Gores	Artemis Acquisition Corporation.
20004236	WellPoint Health Networks Inc	Cerulean Companies, Inc	Cerulean Companies, Inc.
20004237	Ronald E. Huber	Cecil Van Tuyl	Huber Chevrolet Co., Inc.
20004238	Cecil Van Tuyl	Van-Huber, Inc	Van-Huber, Inc., Courtesy Chevrolet-Cadillac, Inc.
20004245	MTD Products Inc	Robert Simpson	A.G. Simpson (Tennessee) Inc.
20004246	Avnet, Inc.	Cadence Design Systems, Inc	SpinCircuit Inc.
20004247	Clark/Bardes Holdings, Inc	William L. MacDonald, Sr	Compensation Resource Group, Inc.
20004263	IDT Corporation	Adir Technologies, Inc	Adir Technologies, Inc.
20004265	Aurora Equity Partners II, L.P	Dynacast International Limited	SPM Holdings Ltd.; Precision Engineering Co.
20004268	Wilmar Industries, Inc	Barnett Inc	Barnett Inc.
20004272	Enron Corp	Media General, Inc	Media General, Inc.
20004273	Telefonica S.A.	Lycos, Inc	Lycos, Inc.
20004275 AXA	AXA	Focus Technologies, Inc	Focus Technologies, Inc.
20004276	Three Cities Fund III L.P	Business Resource Group	Business Resource Group.
20004307	WPP Group plc	Electronic Data Systems Corporation	Electronic Data Systems Corporation. Lacek Systems and Software, Inc. The Lacek Group, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–21187 Filed 8–18–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00150]

Cooperative Agreement for University of Texas M. D. Anderson Center for Research on Minority Health; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a sole source cooperative agreement to support the University of Texas, M. D. Anderson Center for Research on Minority Health to address cancer prevention and control issues in racial/ethnic minority and medically under-served communities through the development and implementation of a comprehensive cancer control model for Texas and the nation that integrates programs in patient care, research, education and prevention. CDC defines comprehensive cancer control as an integrated and coordinated approach to reduce the incidence, morbidity, and mortality of cancer through prevention, early detection, treatment, rehabilitation, and palliation. This initiative addresses racial and ethnic minority populations, including medically under-served men and women, who experience increased rates of morbidity and mortality from cancer.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy

People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area on Cancer. For the conference copy of ''Healthy People 2010,'' visit the Internet site http://www.health.gov/healthypeople.

B. Eligible Applicants

Assistance will be provided only to The University of Texas, M. D. Anderson Cancer Center. No other applications are solicited. Only one (1) application may be submitted. The sole source justification is based on congressional language in the Conference Report (H.R. Rep. 106–710, June 29, 2000), to the supplemental appropriations, 2000 (Public Law 106–246), which earmarked funding for the University of Texas.

C. Availability of Funds

Approximately $439,800 is available in FY 2000 to fund this program. It is expected that the award will begin September 30, 2000, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management/technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00150, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone (770) 488–2757, E-mail address: coc9@cdc.gov

For program technical assistance, contact: Phyllis Rochester, PhD, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion (K–57), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Atlanta, GA 30341–3724, telephone 404–488–4880, E-mail address: PFR5@cdc.gov

Dated: August 15, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–21164 Filed 8–18–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Times and Dates: 1 p.m.–4:45 p.m., September 25, 2000; 9 a.m.–5 p.m., September 26, 2000.

Place: The Holiday Inn (Airport), (404) 873–4800 Atlanta, Georgia.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director of CDC, regarding the need for early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

Matters to be Discussed: The discussion will primarily focus on the role of Professional Education and Training in the National Breast and Cervical Cancer Early Detection Program. Additional items to be discussed include the (1) termination date of the committee; and (2) progress made towards the 1990 Strategic Plan.

Members of the public who wish to make a brief oral presentation at the meeting should contact Ms. Tamikio Bohler (770–488–3199) or Ms. Cecilia Nkabinde (770–488–3199) by 4:00 p.m. on September 13, 2000, to have time reserved on the agenda. Each individual or group making an oral presentation will be limited to 5 minutes. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 25 copies of the presentation and 25 copies of the visual aids used at the meeting are to be given to Ms. Bohler no later than the time of the presentation for distribution to the Committee and the interested public.

Contact Person for Additional Information: Tamikio Bohler, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., m/s K64, Atlanta, Georgia 30341, phone: 770/488–3199.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–21162 Filed 8–18–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for HIV, STD, and TB Prevention Meeting

Name: HIV Prevention Strategic Plan Meetings.

Times and Dates:

Tuesday—September 19, 2000 (1:30 p.m.–4:30 p.m.)

Oakland/San Francisco, CA: Holiday Inn-Bay Bridge, 1800 Powell Street, Emeryville, CA 94608, Phone: 510–658–9300

Wednesday—September 20, 2000 (1:30 p.m.–4:30 p.m.)

Houston, TX: Red Lion 2525 West Loop South, Houston, TX 77027, Phone: 713–961–3000

Thursday—September 21, 2000 (1:30 p.m.–4:30 p.m.)

Chicago, IL: Congress Plaza Hotel, 520 South Michigan Avenue, Chicago, IL 60605, Phone: 312–427–3800

Thursday—September 28, 2000 (1:30 p.m.–4:30 p.m.)

New York, NY: Hotel Pennsylvania, 401 7th Avenue, New York, NY 10001, Phone: 212–736–5000

Place: See above.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: To present the current draft of the Centers for Disease Control and Prevention's HIV Prevention Strategic Plan and to provide an opportunity for community comment.

Matters to be Discussed: Agenda items include background and development of the draft HIV Prevention Strategic Plan; the plan itself; next steps in plan development; and public comments.

Contact Person for More Information: Lydia Ogden, National Center for HIV, STD, and TB Prevention, Office of Planning and Policy Coordination, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8031.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–21163 Filed 8–18–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–204]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Data Collection for the Second Generation Social Health Maintenance Organization Demonstration;

Form No.: HCFA–R–204 (OMB# 0938–0709);

Use: The data collected under this effort will be used to support the operational needs of the Congressionally-mandated Second Generation of the Social Health Maintenance Organization Demonstration. The purpose of the data collections is to collect the necessary data elements from members of the treatment group for the risk-adjusted S/HMO—payment methodology, and to gather information from members of the treatment group to enable the participating S/HMO–II site to identify high-risk beneficiaries and more appropriately target the clinical and social resources of the S/HMO model.;

Frequency: On occasion, and annually;

Affected Public: Individuals or households

Number of Respondents: 40,393;

Total Annual Responses: 69,717;

Total Annual Hours: 32,917.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 9, 2000.

John P. Burke III

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–21206 Filed 8–18–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–485]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Home Health Services Under Hospital Insurance, Manual Instructions and Supporting Regulations in 42 CFR 409.40–.50, 410.36, 410.170, 411.4–.15, 421.100, 424.22, 484.18 and 489.21; *Form No.:* HCFA–485 (OMB# 0938–0357); *Use:* The ''Home Health Services Under Hospital Insurance'' is a certification and plan of care used by the Regional Home Health Intermediaries (RHHIs) to ensure reimbursement is made to Home Health agencies only for services that are covered and medically necessary under Part A and Part B. The attending physician must sign the HCFA–485 (OMB 0938–0357) authorizing the home services for a period not to exceed 62 days.; *Frequency:* Other (every 60 days); *Affected Public:* Business or other for-profit; *Number of Respondents:* 7,322; *Total Annual Responses:* 5,580,000; *Total Annual Hours:* 1,395,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone

number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan (HCFA–485), Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 19, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–21207 Filed 8–18–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–311]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Study to Support Development and Refinement of a Classification System and Prospective Payment System for Patients in Inpatient Rehabilitation Hospitals and Exempt Rehabilitation Units;

Form No.: HCFA–R–311 (OMB# 0938–NEW);

Use: This study will collect patient characteristics (using a previously approved instrument, the MDS–PAC), facility characteristics, and resource utilization as determined by staff time measurement and ancillary charges. The resulting analytic data base will support the development and refinement of a classification system for Medicare beneficiaries. This information will be used to develop a classification of Medicare patients using rehabilitation services in inpatient rehabilitation hospitals and exempt rehabilitation units in conformance with the requirements of the BBA of 1997.

Frequency: On occasion.

Affected Public: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 1,640.

Total Annual Responses: 2,174.

Total Annual Hours: 4,735.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–21205 Filed 8–18–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–XQ]

Notice of Closing Order in the Billings Field Office; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Bureau of Land Management Montana State Director Mat Millenbach has closed specific lands listed below effective August 17, 2000. These restrictions amend and are in addition to the Level 3 fire restrictions enacted on Friday, August 11, 2000, for all lands of the Billings Field Office and are in response to the region's increasing fire potentials, the current level of fire activity, and the current scarcity of fire suppression resources.

Pursuant to 43 Code of Federal Regulations 9212.2, the following Bureau of Land Management lands administered by the Billings Field Office in Yellowstone and Musselshell counties are closed to motorized vehicle use. These closures are in addition to restrictions enumerated in 43 Code of Federal Regulations 9212.1 and become effective as of 12:01 a.m. Mountain Daylight Time Thursday, August 17, 2000, and will remain in effect until rescinded or revoked.

Area closures	Legal description
Action	T. 3 N., R. 25 E., Sec. 5–8, 17, 20
Asparagus Point	T. 8 N., R. 27 E., Sec. 2
Shepherd Ah-Nei	T. 3 N., R. 28 E., Sec. 6 T. 4 N., R. 27 E., Sec. 24, 25, 36 T. 4 N., R. 28 E., Sec. 19, 20, 30, 31
South Hills	T. 1 S., R. 26 E., Sec. 14: E2W2, S2SE, and that portion lying along the southeastern bank of the Yellowstone River in the E2NWNW Sec. 21: E2NE,SWNE,SENW Sec. 22: SWNE,NW,N2S2 Sec. 23: N2NE,NENW Sec. 24: W2S2 Sec. 25: NWNW Sec. 26: E2NE
Steamboat Butte	T. 6 N., R. 29 E., Sec. 4–5, 7–9

Exemptions

Pursuant to 43 Code of Federal Regulations 9212.2, the following persons are exempt from this order:

1. Any Federal, State, or local officer or member of an organized rescue or firefighting force in the performance of an official duty.

2. Persons with a permit or other written authorization specifically allowing the otherwise prohibited act or omission.

3. Private landowners requiring access to their lands across closed public lands.

4. Grazing permittees in the performance of activities directly related to management of their livestock.

For all persons with exemptions, driving will only be allowed on existing roads void of vegetation. All other travel by persons will be by foot or horseback.

Violation of this order is prohibited by the provisions of the regulations cited. Under 43 Code of Federal Regulations 9212.4, any violation is subject to punishment by a fine of not more than $1,000 and/or imprisonment of not more than 12 months.

DATES: Restrictions go into effect at 12:01 a.m. mountain daylight time, August 17, 2000, and will remain in effect until further notice.

ADDRESSES: Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

FOR FURTHER INFORMATION CONTACT: Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: August 16, 2000.

Mat Millenbach,

State Director.

[FR Doc. 00–21309 Filed 8–17–00; 11:22 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Alaska Resources Advisory Council will conduct an open meeting Thursday, September 21, 2000, from 10 a.m. until 4:30 p.m. and Friday, September 22, 2000, from 8:30 a.m. until 3 p.m. The meeting will be held in the Anchorage Federal Building at 7th and C Street in room 135.

Primary agenda topics include BLM's proposed twenty-year extension of the Campbell Tract withdrawal and standards for BLM resource management in Alaska. Public comment concerning items on the agenda will be heard from 1 to 2 p.m. Thursday, September 21. Written comments may be submitted at the meeting or mailed to BLM at the address below.

ADDRESSES: Inquiries or comments should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: August 14, 2000.

Francis R. Cherry, Jr.,

State Director.

[FR Doc. 00–21166 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–XQ–2527]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on September 13 in Canon City, Colorado. The meeting is scheduled to begin at 11:30 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include a discussion on current plan amendments, and an update on the Recreation Guidelines for Colorado. All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 1 p.m. on September 13 or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Wednesday, September 13, 2000 from 11:30 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City, Colorado 81212

CONTACT: For further information contact Ken Smith at (719) 269–8500.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City Center and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 11, 2000.

John L. Carochi,

Acting Front Range Center Manager.

[FR Doc. 00–21211 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–73528, UTU–73529, UTU–73530]

Utah; Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–73528, UTU–53529, and UTU–73530 for lands in Sevier County, Utah, was timely filed and required rentals accruing from April 1, 2000, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for each lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the leases as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate leases UTU–73528, UTU–73529, and UTU–73530, effective April 1, 2000, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Branch of Minerals Adjudication.

[FR Doc. 00–21165 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05;N–52819]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to amend its existing lease and add an additional 5 acres to the 10 acres already leased. The additional 5 acres is due to the increase in student population and thus the increased facility space for those students. The lease is for the construction, operation, and maintenance of an elementary school, located at the intersection of Tee Pee Lane and Bright Angel Way.

Mount Diablo Meridian, Nevada

T. 19S., R. 60E.,

Sec. 30 W½SE¼SW¼NE¼

Containing 5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. Easements in favor of Clark County for roads, public utilities and flood control purposes.

2. All valid and existing rights, which are identified and shown in the case file.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Dr., Las Vegas, Nevada 89108–2135.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an elementary School.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 25, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–21210 Filed 8–18–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0091).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) titled ''30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.'' We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by September 20, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0091), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain at no cost a copy of our submission to OMB, which includes the regulations that require this information to be collected.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1010–0091.

Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. Regulations at 30 CFR part 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

We use the information collected under 30 CFR part 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- Determine effectiveness of the spill-response capability of owners/operators;
- Review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements of this rule to ensure that they meet minimum requirements of OPA;
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill response plans and to witness spill-response exercises;
- Assess the sufficiency and availability of contractor equipment and materials;

• Verify that sufficient quantities of equipment are available and in working order;

• Oversee spill-response efforts and maintain official records of pollution events; and

• Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

Responses are mandatory. No proprietary, confidential, or sensitive information is collected.

Frequency: The frequency varies by regulatory requirement, but is mostly annual or on occasion.

Estimated Number and Description of Respondents: Primarily approximately 197 owners or operators of facilities located in both State and Federal waters seaward of the coast line and 3 oil spill response companies.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 42,233 burden hours (refer to burden chart).

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no non-hour cost burdens for this collection.

BURDEN BREAKDOWN

Citation 30 CFR 254	Reporting requirement	Annual number	Burden (in hours)	Annual burden hours
254.1(a)–(d); 254.2(a); 254.3 thru 254.5; 254.7; 254.20 thru 254.29; 254.44(b).	Submit spill response plan for OCS facilities and related documents.	25 new plans	120	3,000
254.1(e)	Request MMS jurisdiction over facility landward of coast line (no recent request received).	2 requests	.5	1
254.2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	12 certifications	10	120
254.2.(c); 254.30	Submit revised spill response plan for OCS facilities at least every 2 years.	170 revised plans	25	4,250
254.8	Appeal MMS orders or decisions	Burden covered under 30 CFR 290 (1010–0121)..		0
254.42(f)	Inform MMS of the date of any exercise (triennial).	244 notifications	1	244
254.46(a)	Notify NRC of all oil spills from owner/operator facility.	Burden would be included in the NRC inventory..		0
254.46(b)	Notify MMS of oil spills of one barrel or more from owner/operator facility; submit follow-up report.	59 notifications & reports	1	59
254.46(c)	Notify MMS & responsible party of oil spills from operations at another facility.	23 notifications	1	23
254.50; 254.51	Submit response plan for facility in State waters by modifying existing OCS plan.	9 plans	45	405
254.50; 254.52	Submit response plan for facility in State waters following format for OCS plan.	9 plans	100	900
254.50; 254.53	Submit response plan for facility in State waters developed under State reqmts.	15 plans	93	1,395
254.54	Submit description of oil-spill prevention procedures.	36 submissions	5	180
Reporting—Subtotal		604 Responses		10,577
254.41	Conduct annual training; retain training records for 2 years.	197 owners/operators	40	7,880
254.42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years.	206 exercises	110	22,660
254.43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years.	31 inspections × 12 months = 372.	3	1,116
Recordkeeping—Subtotal		197 Recordkeepers (RKs)	3	31,656
Total Hour Burden		801 Responses/RKs		42,233

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 25, 2000, we published a **Federal Register** notice

(65 FR 3826) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. In addition, § 254.9 displays the OMB control number, specifies that the public may comment at anytime on the collection of information required in the 30 CFR part 254 regulations, and provides the address to which they should send comments. We have received no comments in response to those efforts. We also consulted with several respondents and adjusted some of the information collection burdens as a result of those consultations.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 20, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: August 3, 2000.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 00–21212 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior established a Royalty Policy Committee (Committee) on the Minerals Management Advisory Board to provide advice on our management of Federal and Indian minerals leases, revenues, and other minerals related policies. Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and other Federal departments.

This will be the eleventh meeting of the Committee. A chairperson will be elected, majority and minority reports on Sodium/Potassium draft valuation regulations will be presented for consideration, and the Coal and Accounting Relief for Marginal Properties subcommittees will present interim reports. We will be prepared to discuss our royalty-in-kind programs, and our administrative appeal procedures. Guest presenters will discuss the State of Texas's program of exchanging natural gas for electricity and the results of a natural gas study.

DATES: Thursday, September 7, 2000, 8:30 a.m. to 5 p.m., Mountain Daylight Savings time.

ADDRESSES: The meeting will be held at the Sheraton Denver West Hotel, 360 Union Boulevard., Lakewood, CO 80228, telephone number (303) 987–2000.

FOR FURTHER INFORMATION CONTACT: Gary L. Fields, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, PO Box 25165, MS 3062, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3781, e-mail gary.fields@mms.gov.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register** and posted on our Internet site at *http://www.rmp.mms.gov/Laws_R_D/RoyPC/RoyPC.htm.* Meetings will be open to the public without advanced registration, on a space available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration; copies of these written statements should be submitted to Gary Fields. Within 2 weeks following the conclusion of each meeting, the minutes for the meeting will be available for public inspection and copying at our offices in Building 85 on the Denver Federal Center in Lakewood, Colorado; the minutes will also be posted on our Internet site. These meetings are conducted under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 1) and the Office of Management and Budget (Circular No. A–63, revised).

Dated: August 15, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–21227 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 12, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 5, 2000.

Carol D. Shull,

Keeper of the National Register.

California

Alameda County

Heinhold's First and Last Chance Saloon, 56 Jack London Square, Oakland, 00001067

San Bernardino County

Black Canyon—Inscription Canyon, Address Restricted, Hinkley, 00001046

Colorado

Las Animas County

Rourke Ranch Historic District, Comanche National Grassland, La Junta, 00001047

Illinois

Cook County

West Town State Bank Building, 2400 W. Madison St., Chicago, 00001049

Saline County

Saline County Poor Farm, 1600 Feazel Rd., Harrisburg, 00001048

Maryland

Frederick County

Bloomsbury, 2062 Thurston Rd., Frederick, 00001053

Queen Anne's County

Churchill Theatre—Community Building, MD 19, Church Hill, 00001051

Washington County

Funkstown Historic District, Roughly bounded by Antietam Creek, US 40A, Stouffer Ave., and High St., Funkstown, 00001050

Woburn Manor, 7661 Dam #4 Rd., Sharpsburg, 00001052

Mississippi

Jefferson County

Church Hill Rural Historic District, MS 553 and Church Hill Rd., 1 mi. S of Christ Episcopal Church, Natchez, 00001054

Montgomery County

Stafford's Wells Hotel, MS 1, Winona, 00001059

Tippah County

US Post Office, Old—Ripley, (Mississippi Post Offices 1931–1941 TR) 301 N. Main St., Ripley, 00001056

Tishomingo County

Bear Creek Fishweir #1, Tishomingo State Park, Tishomingo, 00001057
Bear Creek Fishweir #2, Tishomingo State Park, Tishomingo, 00001058

Warren County

Carr Junior High School, (Vicksburg MPS) 1805 Cherry St., Vicksburg, 00001055

Missouri

Lafayette County

Old Neighborhoods Historic District (Boundary Decrease), 1312, 1401, 1406, 1413, 1415, 1417, 1500, 1501, and 1502 Lafayette St., Lexington, 00001060

New Jersey

Essex County

Four Corners Historic District, Roughly bounded by Raymond Blvd., Mulberry St., Hill St. and Washington St., Newark, 00001061

New York

Westchester County

Washington Irving Memorial, Broadway and Sunnyside Ln., Irvington, 00001062

Ohio

Cuyahoga County

New England Building, 617–637 Euclid Ave., 614–626 Vincent Ave., Cleveland, 00001065

Montgomery County

Red Oak—Sherman, William C., House, 1231 Hook Estates Dr., Dayton, 00001064

Warren County

Decker, Henry, Farmstead, 2595 W. Lower Springboro Rd., Springboro, 00001063

Utah

Cache County

Whittier School, 280 North 400 East, Logan, 00001066

Sanpete County

Centerfield School and Meetinghouse, (Mormon Church Buildings in Utah MPS) 140 S. Main St., Centerfield, 00001068

Wisconsin

Manitowoc County

Central Park Historic District, Roughly bounded by 19th St., Adams St., 16th St. and Jefferson St., Two Rivers, 00001069

Ozaukee County

Port Washington Downtown Historic District, Roughly along N. Franklin St., from E Jackson St. to E Grand Ave., Port Washington, 00001070

A Request of for *Removal* has been made for the following resources:

Iowa

Louisa County

Springer, Judge Francis, House, S of Columbus City, Columbus City vicinity, 83000388

Minnesota

Nicollet County

St. Peter Central School, 300 S. 5th St., St. Peter, 80002092

[FR Doc. 00–21233 Filed 8–18–00; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Final)]

Certain Ammonium Nitrate From Russia

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Russia of certain ammonium nitrate, provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with respect to the subject imports.

Background

The Commission instituted this investigation effective July 23, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by the ad hoc Committee for Fair Ammonium Nitrate Trade.[3] The final phase of the investigation was scheduled [4] by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain ammonium nitrate from Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). On May 19, 2000, Commerce entered into a suspension agreement with Russia; subsequently both Commerce and the Commission suspended their investigations. On June 29, 2000, the petitioner requested a continuation of the investigation and both Commerce and the Commission resumed their investigations. Notice of the scheduling of the Commission's continuation of the investigation and of a public hearing 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 July 5, 2000 (65 FR 41489). The hearing was held in Washington, DC, on July 11, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 14, 2000. The views of the Commission are contained in USITC Publication 3338 (August 2000), entitled Certain Ammonium Nitrate from Russia: Investigation No. 731–TA–856 (Final).

Issued: August 15, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–21232 Filed 8–18–00; 8:45 am]
BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Jennifer A. Hillman not participating.

[3] The Committee for Fair Ammonium Nitrate Trade consisted of the following companies: Air Products & Chemicals, Inc., Allentown, PA; El Dorado Chemical Co., Oklahoma City, OK; LaRoche Industries, Inc., Atlanta, GA; Mississippi Chemical Corp., Yazoo City, MS; Nitram, Inc., Tampa, FL; and Wil-Gro Fertilizer, Inc., Celina, TX.

[4] Notice of the scheduling of the Commission's investigation and of a public hearing 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 notice in the **Federal Register** of January 18, 2000 (65 FR 2643).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Review)]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order investigation on Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On March 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 FR 13988, March 15, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the review 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 this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review 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 review will be placed in the nonpublic record on December 12, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on January 9, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 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 January 4, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 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 to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is December 21, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 18, 2001; 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 review may submit a written statement of information pertinent to the subject of the review on or before January 18, 2001. On January 31, 2001, 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 February 2, 2001, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: August 16, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–21231 Filed 8–18–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Domestic Preparedness Office, FBI, DOJ; Committee Management; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2), the Director, FBI, with the concurrence of the Attorney General, has determined that the establishment of the State and Local Advisory Group to the National Domestic Preparedness Office (NDPO) is necessary and in the public interest, in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its establishment. This determination follows consultation with the Office of Management and Budget and with the Committee Management Secretariate, General Services Administration.

Name of Committee: State and Local Advisory Group to the NDPO.

Purpose and Objective: The State and Local Advisory Group shall provide the Attorney General and the NDPO practical and general policy advice regarding program strategy, development, and implementation in support of the NDPO goal to enhance the capabilities of emergency responders and medical and public health officials at all levels to respond safely and effectively to potential or actual terrorist acts involving weapons of mass destruction (WMD). The Advisory Group will serve as the interface between federal domestic preparedness planning and the needs and priorities of the state and local emergency response and health care communities.

Balanced Membership Plans: The Advisory Group will have approximately 30 members who will reflect a balanced representation of perspectives and interests from the emergency response community. It will represent the diverse functional areas of state and local entities which may be involved in the planning for or response to a terrorism incident involving WMD; e.g., fire/rescue, HAZMAT, emergency medical and public health services, law enforcement, emergency management, and state and local governments. Members have been selected from recommendations made by the federal agency partners in the NDPO, as well as by members of Congress, various professional response associations, and the general public. Criteria guiding the selection of members included:

—Demonstrated background and interest in the issue of domestic preparedness, particularly in the area of WMD terrorism response;

—Objectivity and diversity with regard to professional perspective;

—Nondiscrimination on the basis of race, color, national origin, religion, age, sex, or sexual orientation; and

—Geographical balance.

Duration: Two years, subject to renewal.

Responsible FBI Official: Thomas G. Kinnally, Administrator, NDPO, Room 5214, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

Dated: August 3, 2000.

Dale L. Watson,

Assistant Director in Charge, Counterterrorism Division.

[FR Doc. 00–21067 Filed 8–18–00; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–093]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Aviation Operations Systems Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Aviation Operations Systems Subcommittee meeting.

DATES: Monday, September 18, 2000, 1 p.m. to 5 p.m. and Tuesday, September 19, 2000, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Jacobsen, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–3743.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aerospace Operations Systems Review

—Aircraft Icing Research

—Human Automation Integration Research

—Human Error and Countermeasures Research

—Psychological/Physiological Stressors and Factors Research

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 15, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–21168 Filed 8–18–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–095]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Tuesday, September 12, 2000, 8 a.m. to 1:45 p.m.; and Wednesday, September 13, 2000, 8 a.m. to 10:30 a.m.

ADDRESSES: Ames Research Center (AMES), National Aeronautics and Space Administration, The Moffett Field Training and Conference Center, Bldg 3., Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Air Traffic Management Program

—Space Launch Initiative Status

—Information Systems Technology

—Committee/TaskForce/Working Group Reports

—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 15, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–21170 Filed 8–18–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–094]

Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Centennial of Flight Commission.

DATES: Tuesday, September 12, 2000, 1 p.m. to 3:30 p.m.

ADDRESSES: Smithsonian National Air and Space Museum, 7th and Independence Avenue, SW, Director's Conference Room, 3rd Floor, Washington, DC 20560. Attendees must check in at the Information Desk to be cleared to the 3rd floor.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Farmarco, Code ZC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Experimental Aircraft Association Plans for the Wright Centennial

—Discussion of Chair's Draft ''White Paper on a Strategy Posture for the US Centennial of Flight Commission''

—Discussion of FY 2000 Report to Congress

—Plans for Next Meeting

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 15, 2000.

Matthew M. Crouch

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–21169 Filed 8–18–00; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

Pennsylvania Power Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Firstenergy Nuclear Operating Company; Beaver Valley Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of title 10 of the Code of Federal Regulations (10 CFR) § 50.60(a), and 10 CFR part 50, Appendix G, for Facility Operating License No. NPF–73, issued to FirstEnergy Nuclear Operating Company (the licensee), for operation of the Beaver Valley Power Station, Unit No. 2 (BVPS–2), located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

Appendix G to 10 CFR part 50, requires that pressure/temperature (P/T) limits be established for reactor pressure vessels during normal operating and hydrostatic or leak rate testing conditions. Specifically, this regulation states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Additionally, it specifies that the requirements for these limits are contained in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G.

To address provisions of an amendment to the Technical Specification P/T limits, the licensee requested in its submittal dated June 17, 1999, that the NRC staff exempt BVPS–2 from the requirements of 10 CFR part 50, § 50.60(a), and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N–640 in establishing the reactor vessel pressure limits at low temperatures.

Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of the K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P/T limits. Since the K_{IC} fracture toughness curve shown in ASME, Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve), provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME, Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P/T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. Therefore, an exemption is required in order to apply the Code Case. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still required because the proposed P/T limits (excluding Code Case N–640) are based on the 1989 edition of the ASME Code.

The proposed action is in accordance with the licensee's application for exemption dated June 17, 1999.

The Need for the Proposed Action

ASME Code Case N–640 is needed to revise the method used to determine the reactor coolant system (RCS) P/T limits.

The purpose of 10 CFR part 50, § 50.60(a), and 10 CFR part 50, Appendix G, is to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. This is accomplished through these regulations that, in part, specify fracture toughness requirements for ferritic materials of the reactor coolant pressure boundary. Pursuant to 10 CFR part 50, Appendix G, it is required that P/T limits for the RCS be at least as conservative as those obtained by applying the methodology of the ASME Code, Section XI, Appendix G.

Current overpressure protection system (OPPS) setpoints produce operational constraints by limiting the P/T range available to the operator to heat up or cool down the plant. The operating window through which the operator heats up and cools down the RCS becomes more restrictive with continued reactor vessel service. Reducing this operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent OPPS actuation due to pressure surges associated with normal plant evolutions such as reactor coolant pump start and swapping operating charging pumps with the RCS in a water-solid condition. The impact on the P/T limits and OPPS setpoints has been evaluated for an increased service period to 15 effective full power years based on ASME Code, Section XI, Appendix G, requirements. The results indicate that OPPS would significantly restrict the ability to perform plant heatup and cooldown, create an unnecessary burden to plant operations, and challenge control of plant evolutions required with OPPS enabled. Continued operation of BVPS–2 with P/T curves developed to satisfy ASME Code, Section XI, Appendix G,

requirements without the relief provided by ASME Code Case N–640 would unnecessarily restrict the P/T operating window, especially at low temperature conditions.

Application of ASME Code Case N–640 will provide results which are sufficiently conservative to ensure the integrity of the reactor coolant pressure boundary while providing P/T curves which are not overly restrictive. Implementation of the proposed P/T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety.

In the associated exemption, the NRC staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of ASME Code Case N–640.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action provides adequate margin of safety against brittle failure of the reactor coolant pressure boundary.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for BVPS–2.

Agencies and Persons Consulted

In accordance with its stated policy, on July 10, 2000, the staff consulted with the Pennsylvania State official, Mr. L. Ryan of the Pennsylvania Department of Environmental Protection Bureau, Division of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 17, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 16th day of August, 2000.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–21230 Filed 8–18–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, September 7, 2000
Thursday, September 21, 2000
Thursday, September 28, 2000

The meeting will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: August 10, 2000.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 00–21176 Filed 8–18–00; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Plan for Secure Postage Meter Technology

AGENCY: Postal Service.

ACTION: Notice of proposed plan with request for comments.

SUMMARY: The Postal Service recently completed the first phase of a plan to remove insecure postage meters from the marketplace with the decertification of mechanical postage meters. The proposed plan for the second phase, the retirement of manually reset electronic meters, was published for comment May 1, 2000. While these comments are under review, the Postal Service is publishing notice of additional phases of the proposed plan for secure postage meter technology. Upon completion of the phases of this plan all meters in service will offer enhanced levels of security, thereby greatly reducing the Postal Service's exposure to meter fraud, misuse, and loss of revenue.

DATES: Comments must be received October 5, 2000.

ADDRESSES: Written comments should be sent to the Manager, Postage Technology Management, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza SW, Washington DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday at the above address.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: In 1996 the Postal Service, in cooperation with all authorized postage meter manufacturers, began a phaseout, or decertification, of all mechanical postage meters because of identified cases of indiscernible tampering and misuse. Postal revenues were proven to be at serious risk. The completion of this effort, which resulted in the withdrawal of 776,000 mechanical meters from service, completed Phase I of the Proposed Plan for Secure Technology. Phase II of the Proposed Plan, the retirement of electronic meters that are manually set by postal employees, was described in the **Federal Register** on May 1, 2000. Additional phases of the Proposed Plan are described in the current notice.

It is the Postal Service's intent to make this an orderly process that minimizes impacts on meter users. Notification of additional phases of the proposed plan is published at this time to give both postage meter manufacturers and postage meter users ample time to make timely and intelligent decisions on the selection of postage meters and associated mailing equipment. Given the rapid pace of new technological developments for secure postage meter technology, meter manufacturers should not offer, and customers should not accept, leases for postage meter equipment of more than five (5) years' duration.

Phases III and IV of the Postal Service proposed plan for secure postage meter technology affect non-digital, or letterpress, meters that are remote set under the Computerized Meter Resetting System (CMRS). If such a meter has a timeout feature, which automatically disables the meter if it is not reset within a specified time period, it is called an enhanced meter. Phase III of the proposed plan is to end the placement of non-enhanced CMRS letterpress meters by June 2001. Phase IV of the proposed plan is to end the placement of enhanced CMRS letterpress meters by December 2003.

A final plan will be published after all comments have been received and reviewed by the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–21160 Filed 8–18–00; 8:45 am]

BILLING CODE 7710–12–U

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB and SSA Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs; Notification to individuals who are railroad employees, or applicants and beneficiaries under the Railroad Retirement Act or who are applicants or beneficiaries under the Social Security Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration (SSA) of the amount of wages reported to SSA and the amount of benefits paid by that agency. The RRB is also issuing public notice, on behalf of the Social Security Administration, of SSA's use and intent to use, in ongoing computer matching programs, information obtained form the RRB of the amount of railroad earnings reported to the RRB.

The purposes of this notice are (1) to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match and (2) to advise individuals applying for or receiving benefits under the Social Security Act of the use made by SSA of this information obtained from RRB by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone nuymber (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in an computer matching program to publish a notice regarding the establishment of a matching program. This notice relates to a prior consolidation of two matching programs. Under one of these programs (referenced by RRB for convenience as RRB/SSA 1–2–3), SSA furnishes to RRB information needed by RRB to administer the Railroad Retirement Act. Under the other program (referenced by RRB for convenience as RRB/SSA–4), RRB furnishes to SSA information needed by SSA to administer the Social Security Act. For RRB/SSA 1–2–3, the required notice covering the fourth cycle of the program which began July 6, 1997, was published at 62 FR 25679 (May 9, 1997); for RRB/SSA–4, the required notice covering the fourth cycle of the program which began August 28, 1997, was published at 62 FR 40563 (July 29, 1997). The last notice for the consolidated matching program which began April 29, 1998 was published at 63 FR 14983 (March 27, 1998).

Name of Participating Agencies: Social Security Administration and Railroad Retirement Board.

Purpose of the Match: The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f). The benefit information is needed to adjust the tier

I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

In addition, the RRB will receive from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Thirdly, the RRB will receive from SSA once a year a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive from RRB weekly RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation (AERO). This information is available from no other source.

SSA will also receive from RRB on a daily basis RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231q(2)) requires that earnings considered as compensation under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security Act if the person has less than 10 years of railroad service or has 10 or more years of service but does not have a current connection with the railroad industry at the time of his/her death.

Authority for Conducting the Match: Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the recomputation of benefits.

Categories of Records and Individuals Covered: All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any social security wages and the amount of any social security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB. The applicable Privacy Act Systems of Records used in the matching program are as follows: RRB–5, Master File of Railroad Employees' Creditable Compensation; RRB–22, Railroad Retirement, Survivor, Pensioner Benefit System; SSA/OSR, 09–60–0090, Master Beneficiary Record (MBR); and SSA/OSR, 09–60–0059, Master Earnings File (MEF).

Inclusive Dates of the Matching Program: the consolidated matching program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be or has been furnished to the Office of Management and Budget and the designated committees of both houses of Congress.

Dated: August 10, 2000.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–21213 Filed 8–18–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[SEC Investor Compliant Forms; SEC File No. 270–485; OMB Control No. 3235-new]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC) is soliciting comments on the collection of information summarized below. The SEC plans to submit three proposed forms to the Office of Management and Budget for approval. The titles of the forms are SEC Investor Complaint Form (two versions) and SEC Investor Question Form.

The SEC receives annually over 150,000 letters, e-mails, faxes, and phone calls from investors who have complaints and questions on a wide range of investment related issues. The SEC proposes to place on its website two online forms, and to make available a hard-copy complaint form, to be used by investors to submit complaints and questions to the SEC through the Internet, by mail, or by fax. The SEC will use the information supplied on the forms to respond to general investor queries, process investor complaints, or initiate enforcement investigations in appropriate matters. The information that is captured automatically in the online forms and through manual data entry of the hard-copy form will allow the SEC to employ automation to direct a complaint or question to the appropriate division or office at the SEC (primarily the Division of Enforcement of the Office of Investor Education and Assistance) for review and processing, to maintain a record of the complaint or question, and to track the volume of complaints and questions received. Investors are not required to use the online or hard-copy Investor Complaint Form or the Investor Question Form and may continue to submit written complaints and questions in letters (sent by mail or fax), e-mail messages, and telephone calls. However, investors who complete the forms enable to SEC to process their complaints and questions more quickly and efficiently.

The respondents to the Investors Complaint Forms and the Investor Question Form will be investors who want the SEC's assistance with their complaints against entities that the SEC regulates, who want to report companies or individuals who may be violating the federal securities, laws, or who want to ask questions or request information about the statutes and rules the SEC administers or about specific companies the SEC regulates.

Investors will use the Investor Complaint Forms to send complaints to the SEC about entities that are regulated

by the SEC, about issuers of securities, and about individuals and companies whose activities may violate the federal securities laws. Investors who submit the Investor Complaint Form are asked to provide information on, among other things, their names, how they can be contacted, the names of the financial institutions, companies, or individuals they are complaining about, the nature of their complaints, what documents can be provided, and what legal actions they have taken. The online version asks for general information about the investor's complaint and then poses follow-up questions based on previous answers. Most questions on the Investor Complaint Form are asked in a multiple-choice style that allows the investor to provide an answer simply by checking a box. Some questions require the investor to provide more detailed full-text responses about the facts of his complaint.

Investors will use the Investor Question Form to ask general questions about the SEC's programs, rules, and other matters that are not appropriate for the Investor Complaint Form. Investors who submit the Investor Question Form are asked to provide their names, how they can be contacted, and their questions.

The total reporting burden of using the Investor Complaint Forms or Investor Question Form is estimated to be 23,750 hours. This was calculated by multiplying the total number of investors whom the SEC expects to use the forms times how long it will take to complete each form (95,000 respondents × 15 minutes = 23,750 burden hours).

Use of Investor Complaint and Questions Forms is voluntary. The SEC will continue to accept questions and complaints submitted in letters (sent by mail or fax), e-mail messages, and telephone calls. However, if an investor chooses to submit an Investor Complaint Form or Investor Question Form through the Internet, the investor must respond to certain questions about the nature of the complaint or the form will not be accepted electronically.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 14, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21183 Filed 8–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24598; 812–11922]

CNI Charter Funds and City National Bank; Notice of Application

August 14, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 (''Act'') from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: CNI Charter Funds (the ''Trust'') and City National Bank (the ''Adviser'').

Filing Dates: The application was filed on December 30, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 400 North Roxbury Drive, Suite 600, Beverly Hills, California 92010.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is currently comprised of nine separate series (each a ''Fund,'' and together, the ''Funds''), each with its own investment objectives, policies, and restrictions.[1] The Adviser, a federally chartered bank, serves as the investment adviser to the Funds and is exempt from registration under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust and the adviser that was approved by the Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholders (''Advisory Agreement'').

3. The Advisory Agreement permits the Adviser to enter into separate investment advisory agreements (''Subadvisory Agreements'') with subadvisers (''Subadvisers'') to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund.[2] The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. Each Subadviser is an investment adviser registered under the Advisers Act or

[1] Applicants also request relief for any future series of the Trust and any other future registered open-end management investment company that (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the adviser/subadviser structure that is described in the application; and (c) complies with the terms and conditions in the application. The Trust is the only existing open-end management investment company that currently intends to rely on the order.

[2] Currently, three of the Funds are advised by a Subadviser.

exempt from registration. The Adviser compensates the Subadvisers out of the fees paid to the Adviser by the Fund.

4. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is unnecessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the polices and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants submit that the requested relief will reduce the Funds' expenses associated with shareholder meetings and proxy solicitations, and enable the Funds to operate more efficiently. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund, as described in the application, will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of the prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders before offering shares of that Fund to the public.

2. Each Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility subject to review of the Board to monitor and evaluate Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without that agreement, including the compensation to be paid under it, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish shareholders of the affected Fund with the information about the Subadviser that would be included in a proxy statement. The information will include any changes caused by the addition of the new Subadviser. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934, as amended.

7. The Adviser will provide general management services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select, and recommend Subadvisers to manage all or a part of a Fund's assets; (iii) when appropriate, allocate and reallocate the Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the Fund's investment objectives, restrictions, and policies.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, director or officer) any interest in a Subadviser except for: (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21184 Filed 8–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 21, 2000.

A closed meeting will be held on Thursday, August 24, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, August 24, 2000 will be: Institution and settlement of injunctive actions; and institution and settlement of

administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: August 17, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–21415 Filed 8–17–00; 3:40 pm]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3396]

Notice of Information Collection Under Emergency Review: Annual Placement Report for the Camp Counselor and Summer Work/Travel Program Categories, J–1 Exchange Visitor Program

AGENCY: Department of State.

ACTION: Notice of information collection under emergency review.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: ECA/EC/ECD—Bureau of Educational and Cultural Affairs—Exchange Visitor Program Designation Staff.

Title of Information Collection: Placement Report, Camp Counselor and Summer Work/Travel Program Categories.

Frequency: Annual.

Form Number: No forms are used.

Respondents: Private Sector Organizations designated by the Department of State to administer J–1 Camp Counselor and/or Summer Work/Travel Exchange Programs.

Estimated Number of Respondents: 47.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 25 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by July 31, 2000. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until September 6, 2000. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the Department's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the U.S. Department of State, ECA/EC/ECD—Exchange Visitor Program Designation Staff, SA–44, Room 734, 301 4th Street SW, Washington, DC 20547; Telephone: (202) 401–9810; FAX: (202) 401–9809.

Dated: June 27, 2000.

James D. Whitten,

Executive Director, ECA—Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 00–21239 Filed 8–18–00; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3397]

Culturally Significant Objects Imported for Exhibition Determinations: ''Art Nouveau, 1890–1914''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Art Nouveau, 1890–1914,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art in Washington, DC from on or about October 8, 2000 to on or about January 28, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 17, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–21457 Filed 8–18–00; 10:43 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3393]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Durer's Passions''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Durer's Passions,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit

objects at the Harvard University Art Museums in Massachusetts from on or about September 9, 2000 to on or about December 3, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: August 11, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–21236 Filed 8–18–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3394]

Culturally Significant Objects Imported for Exhibition; Determinations: ''From Renoir to Picasso: Masterpieces from the Musee de l'Orangerie''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''From Renoir to Picasso: Masterpieces from the Musee de l'Orangerie,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum in Fort Worth, Texas from on or about November 12, 2000 to on or about February 25, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: August 11, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–21237 Filed 8–18–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3395]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Huupukwanum-Tupaat, Treasures of the Nuuchah-nulth Chiefs''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Huupukwanum-Tupaat, Treasures of the Nuuchah-nulth Chiefs'' imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object is imported pursuant to loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Denver Museum of Natural History (now operating as the Denver Museum of Nature and Science), Denver, Colorado, from October 2, 2000 through January 15, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: August 11, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–21238 Filed 8–18–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice No. 3385]

Shipping Coordinating Committee Subcommittee on Ocean Dumping; Notice of Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on September 11, 2000 from 10 am to Noon to obtain public comment on the issues to be addressed at the September 18–22, 2000 Twenty-second Consultative Meeting of Contracting Parties to the London Convention, which is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twenty-third Scientific Group Meeting of the London Convention held in May 2000.

The meeting will be held at the Environmental Protection Agency offices located at the Fairchild Building, 499 South Capitol Street SW, Washington, DC 20003, Room 809. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. David Redford, Acting Chief, Marine Pollution Control Branch telephone (202) 260–1952.

Dated: August 15, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 00–21235 Filed 8–18–00; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement: Sanitary and Phytosanitary Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public meeting and request for comments.

SUMMARY: In accordance with legislation implementing the North American Free Trade Agreement, we are informing the public of a meeting to be held Thursday, September 7, 2000 at the U.S. Department of Agriculture (USDA) in Washington, DC. The purpose of this meeting is to solicit public comment on proposed agenda items for the next scheduled meeting of the North American Free Trade Agreement (NAFTA) Sanitary and Phytosanitary (SPS) Committee, September 19–20, 2000, in Washington, DC. It is also to

seek public input in identifying any new issues of concern that should be considered for the agenda. Representatives from each of the SPS Committee's eight Technical Working Groups (TWGs) will also be present to apprise the public of each TWG's progress and to respond to questions.

The September meeting will be the Ninth Meeting of the NAFTA SPS Committee and will include the co-chairs from the TWGs that report to the Committee. The purpose of the NAFTA SPS Committee is to address sanitary and phytosanitary trade issues affecting the entry of agricultural products among the three member countries.

DATES: The public meeting date is Thursday, September 7, 2000, 9 a.m. to 11 a.m., USDA South Building (at the back of the USDA cafeteria, first floor, 14th Street and Independence Avenue, SW, Washington, DC. Written comments should be submitted by September 4, 2000.

FOR FURTHER INFORMATION CONTACT: Carolyn T. Cohen, Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 14th Street and Independence Avenue SW, Washington, DC 20250, (202) 720–1301; or e-mail ofsts@fas.usda.gov.

SUPPLEMENTARY INFORMATION: In accordance with Article 722 of NAFTA, the NAFTA SPS Committee is responsible for facilitating: (a) The enhancement of food safety and sanitary and phytosanitary conditions in the territories of the part is; (b) activities of the Parties pursuant to Articles 713 and 714 relating respectively to international standards and equivalence; (c) technical cooperation; and (d) consultation on specific bilateral issues. An SPS issue can be raised by any party and is sent to the Committee for consideration. The Committee will either consider the matter itself or refer the issue to an individual, working group or relevant standard setting organization for technical advice.

Since the entry into force of NAFTA on January 1, 1994, the NAFTA SPS Committee has met on eight separate occasions: March 24, 1994 in Washington, DC; October 6, 1994 in Washington, DC; September 21, 1995 in Mexico City; February 14, 1996 in Mexico City; June 20, 1996 in Ottawa; November 18–19, 1997 in Washington, DC; November 4–5, 1998 in Mexico City; and November 2–3, 1999 in Ottawa. The Committee meets at least once a year with meetings rotating among the three countries. Each TWG is to send at least one representative to the annual Committee meeting to report on its progress and activity. The nine TWGS under the NAFTA SPS Committee and their points of contact (POC) are as follows:

1. *Animal Health:* POC: Dr. Alfonso Torres, Veterinary Services, Animal and Plant Health Inspection Service (APHIS), USDA.

2. *Plant Health, Seeds & Fertilizers:* POC: Dr. Ric Dunkle, Plant Protection and Quarantine, APHIS, USDA.

3. *Fish & Fishery Product Inspection:* POC: Dr. Philip Spiller, Office of Seafood, Food and Drug Administration (FDA).

4. *Meat, Poultry & Egg Inspection:* POC: Dr. John C. Prucha, Food Safety Inspection Service, USDA.

5. *Dairy, Fruits, Vegetables and Processed Foods:* POC: Dr. Terry Troxell, Office of Plant & Dairy Foods & Beverages, FDA.

6. *Veterinary Drugs & Feed:* POC: Dr. Robert Livingstone, Center for Veterinary Medicine, FDA.

7. *Food Additives and Contaminants:* POC: Dr. Alan Rulis, Office of Pre-Market Approval, FDA.

8. *Pesticides:* POC: Ms. Marcia Mulkey, Office of Pesticide Programs, Environmental Protection Agency.

9. *Labeling, Packaging & Standards:* POC: Dr. Christine J. Lewis, Office of Nutritional Products, Labeling and Dietary Supplements, FDA.

PUBLIC MEETING: The public meeting will take place at the U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC, (at the back of USDA cafeteria, 1st floor).

WRITTEN COMMENTS: Those persons wishing to submit written comments should provide five (5) typed copies to Richard White, Director for SPS Affairs, Office of the United States Trade Representatives, 600 17th St., NW., Room 421; Washington, DC 20508. If the submission contains business confidential information, five copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''nonconfidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 20003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representatives, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

David Walters,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 00–21215 Filed 8–18–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Review and Approval From the Office of Management and Budget (OMB) of a Proposed Public Collection 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.*), This notice announces that the FAA is Submitted a proposed information collection request to the Office of Management and Budget (OMB) for review.

DATES: Comments must be received on or before October 20, 2000.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, APF–100, 800 Independence Avenue, SW., Washington DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Title: Laser Operations in the Navigable Airspace (Draft Advisory Circular).

Abstract: Laser operations are a major safety concern to the FAA because laser emissions that encounter and or enter the eye have the potential of incapacitating the pilot or crewmember. In addition, laser light operations have been found to create glare, flashblindness, and after image effects, all of which may interrupt pilot or crewmember activities. The FAA requests the information in the interest of aviation safety to protect aircraft operations from the potential hazardous affect of laser emission. The information collected is reviewed for its impact on

aviation in the vicinity of the laser activity. Upon completion of the review, the FAA issues a letter of determination to the respondent concerning their request.

Burden on public: It is estimated that approximately 20 respondents will submit approximately 200 requests (the Notice Form and the Configuration Form) to the FAA. First-time submitters could take up to 10 hours to prepare the documentation. Subsequent submissions from the same party for the same system may require only about 20 minutes. The total burden on the public is estimated to be 2,200 hours annually.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Public protection clause: 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. Once a control number is assigned, it will be published.

Issued in Washington, DC, on August 14, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–21131 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Hilton Head Island Airport, Hilton Head Island, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Tracie L. Dominy, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Randolph L. Wood, Deputy Administrator of Beaufort County Council at the following address: Post Office Drawer 1228, Beaufort, SC 29901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Beaufort County Council under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Tracie L. Dominy, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 14, 2000, the FAA determined that the application to impose a PFC submitted by Beaufort County Council was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 16, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–02–I–00–HXD.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2000.

Proposed charge expiration date: January 1, 2009.

Total estimated PFC revenue: $2,076,657.

Brief description of proposed project(s):

1. Land Acquisition (10 acres).

2. General Aviation/Apron Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135/non-scheduled carriers.

Any person may inspect the application in person at the FAA office listed below under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Beaufort County Council.

Issued in College Park, Georgia, on August 14, 2000.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 00–21130 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Brazos, Burleson, Grimes, and Robertson Counties, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Brazos, Burleson, Grimes, and Robertson Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Salvador Deocampo, Acting District Engineer, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, Telephone 512–916–5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Federal Railroad Administration (FRA), Texas Department of Transportation (TxDOT), and the Bryan/College Station Metropolitan Organization (B/CSMPO), will prepare an environmental impact statement (EIS) for upgrading the existing railroad corridor or constructing a new corridor for the Union Pacific Railroad (UPRR). The study corridor is approximately 25 miles in length and includes portions of Brazos, Burleson, Grimes and Robertson Counties; the cities of Bryan and College Station; and the Texas A&M University (TAMU) campus. From a regional and local perspective, the UPRR in this area could significantly impact roadway operations, and traffic and pedestrian safety. The population and traffic volumes have grown significantly in the region and the region's population is projected to increase by 50% by the year 2025. Traffic and safety issues are further exacerbated by increasing rail traffic and operations, increasing

population, and expansion of activities and facilities in the western half of the TAMU campus.

As directed by TEA–21, the Major Investment Study (MIS) process will be integrated with the EIS. The primary purpose of this study, known as the ''Local Rail Economic Feasibility and Location Study'' is to perform an alternative corridor analysis to determine the feasibility of upgrading the existing rail corridor or constructing a new corridor which will allow through-freight trains, local motorists, and pedestrians to travel uncongested through all or part of the Bryan/College Station corridor between Hearne and Navasota, Texas. Previous feasibility studies have examined a range of alternatives an alignments.

This study will examine viable alternatives and potential alternatives including the No-Build and vertical realignment and/or horizontal realignment options for the railroad. In addition, the study will evaluate the proposed track improvements required to allow commuter rail operations in conjunction with continuous freight operations. Grade separations of the railroad with Villa Maria Road, George Bush Drive, and FM 2818 are included in the 2000–2025 Metropolitan Transportation Plan (MTP) for the Bryan/College Station region and Transportation Improvement Program (TIP) and will be included in the No-Build Alternative. The study will also include extensive and continuous public involvement to address the long-term mobility need and safety issues of both the region and local community. The study will include the identification of the configuration and operational characteristics of alternatives. It will also include a discussion of the effects on social, economic, and environmental resources, and of other known and reasonably foreseeable agency actions proposed within the study corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations, citizens, and residents who have previously expressed or are known to have interest in this proposal. Public scoping meetings are planned for:

- September 19, 2000 from 6:30 p.m. to 8:30 p.m. at the Bryan First Church of God Fellowship Hall located at 2002 Highway 21 East, Bryan, Texas 77803;
- September 20, 2000 from 6:30 pm to 8:30 pm at Mary Branch Elementary School Cafeteria located at 2040 West Villa Maria, Bryan, Texas 77801; and
- September 21, 2000 from 11:30 am to 1:30 pm at the College Station Conference Center located at 1300 George Bush Drive, College Station, Texas 77840.

Persons with disabilities planning to attend this meeting who require auxiliary aids or services such as interpreters for the hearing impaired, readers, or Braille, school contact Ms. Sandy Wesch-Schulze at 1–877–394–9321 (toll free number), at least two (2) working days prior to the meeting so that appropriate arrangements can be made. Because the public meeting will be conducted in English, any request for language interpreters or other special communication needs should also be made at least two working days prior to the public meeting. Reasonable accommodations will be made to meet these needs.

These meetings will be to solicit public comments on the proposed action during the National Environmental Policy Act (NEPA) process. In addition, public meetings will be held throughout the process. Public notice will be given of the time and place of the other public meetings and hearing. The Draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 15, 2000.

Brett Jackson,

Urban Program Engineer.

[FR Doc. 00–21214 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7798]

Criteria for Granting Waivers of Requirement for Exclusive U.S.-Flag Vessel Carriage of Certain Export Cargoes

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of proposed policy revision.

SUMMARY: The Maritime Administration (MARAD, we, us, our) is soliciting public comment on whether and/or how MARAD should amend its existing criteria for granting waivers of the requirement that cargo covered by Public Resolution 17 (PR–17) 73rd Congress, be carried on U.S.-flag vessels. Our goals for any policy amendments are: (1) the preservation of a cargo base financed by PR–17 for carriage on U.S.-flag vessels; (2) maximum export of U.S. manufactured goods; and (3) maintenance of a viable U.S.-flag merchant fleet for economic growth and national security. The intended effect is to set forth standard procedures for shippers and carriers to follow regarding PR–17 cargo in order to help support the U.S.-flag merchant fleet.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 20, 2000.

ADDRESSES: Your comments should refer to docket number [MARAD–2000–7798]. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW., Washington, DC 20590. You may also submit them electronically via the internet at *http://dmses.dot.gov/submit/.* You may call Docket Management at (202) 366–9324 and visit the docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For non-legal issues you may call Thomas W. Harrelson, Director, Office of Cargo Preference at (202) 366–5515. For legal issues you may call Murray Bloom, Chief, Division of Maritime Assistance Programs of the Office of the Chief Counsel at (202) 366–5320. You may send mail to both of these officials at Maritime Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit

two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Please address whether the information collection in this proposal is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT.** You should mark ''CONFIDENTIAL'' on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final policy (assuming that one is issued), we will consider that comment as an informal suggestion for future policy revisions.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of transportation (http://dms.dot.gov/). On that page, click on ''search.'' On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. The docket number for this document is [7798]. After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Background

PR–17 reads:

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that in any loans made by an instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the instrumentality of the Government, that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedules or at reasonable rates. 46 App. U.S.C. 1241–1.

The reservation of PR–17 cargoes on U.S.-flag vessels helps support the U.S.-flag merchant marine, which is a vital national asset and is necessary in times of war or national emergency. In peacetime, the U.S.-flag merchant marine provides essential service to ensure the continued flow of foreign water-borne commerce. The Export-Import Bank of the United States (Eximbank) is the principal agency generating export cargo subject to PR–17.

In 1934 and 1965, the Attorney General concluded that granting waivers does not violate PR–17. (see 37 Op. A.G. 546 (1934) and 42 Op. A.G. 301 (1965))

MARAD's current policy on granting waivers was first published in *Pike & Fischer's Shipping Regulation Report* (at ¶ 501) in 1959).

On June 30, 1997, we published an amendment to our long established policy. The amendment essentially incorporated the compensatory waiver and a six-month long extended waiver into the policy. It also set forth standard procedures and processes for both shippers and carriers to follow. At that time, we advised that we would review the amended policy after two years to determine if it needed any additional changes.

Thus, under our existing policy, we grant four types of waivers: a general waiver, statutory or non-availability waiver, extended waiver, and compensatory waiver. First, a ''general waiver'' allows the national flag vessels of the recipient country to carry up to fifty percent (50%) of the cargo. Our primary conditions for granting a general waiver is that the recipient country not maintain any discriminatory policies detrimental to U.S.-flag vessels.

The second waiver is a ''statutory'' or ''non-availability'' waiver. MARAD's policy provides that Eximbank, or other government instrumentalities, loan or credit guaranty recipients may apply for a non-availability waiver when it appears that U.S. vessels will not be available within a reasonable time or at reasonable rates. Although U.S.-flag vessels are usually available to carry containerized cargo to most destinations, oversized pieces of equipment require breakbulk vessels. A limited number of U.S.-flag breakbulk vessels serve regular routes. Much of the Eximbank financed cargo is project cargo, comprising oversized pieces of equipment requiring breakbulk vessels. In the past, MARAD has granted non-availability waivers sparingly and only for specific voyages and specific cargoes.

The third type of waiver is called an ''extended'' waiver. If a shipper determines there is no projected U.S.-flag service to the cargo's destination after meetings with the U.S.-flag carriers and us, the shipper can apply for a waiver which is good for up to six months and which covers multiple shipments involving specifically identified pieces of cargo.

The fourth type of waiver is called a ''compensatory''waiver. When a shipper, in honest error or under what we determine to be extenuating circumstances, moves preference cargo on a foreign-flag vessel, he may apply to MARAD for a compensatory waiver. After investigation, MARAD may issue

such a compensatory wavier whereby the shipper contracts with MARAD to move an equivalent amount of non-government impelled cargo, *i.e.* commercial cargo, on U.S.-flag vessels within a specified time period.

We have reviewed the results of the 1997 policy changes. Overall, the results have been very positive. The number of waiver requests has decreased and dialogue between individual shippers and carriers has increased. More cargoes are being booked directly with the U.S.-flag carriers without any waiver requests. The policy amendments have not increased the number of waiver requests that we have denied. On the contrary, the number of waiver denials has remained constant for pre and post policy amendments. We have received only three requests for the six-month extended waiver, all covering small amounts of short interval cargoes, and we granted all three.

During the past two years, we have held extensive discussions with shippers and carriers. The shippers are particularly concerned that when they bid a project, a reasonable projection of transportation availability and costs is required. Project cargoes typically consist of shipments over an extended prior of time. Frequently, the shipments must be planned so the delivery is made in proper sequence and in critical time frames consistent with the construction schedule. Some cargoes require a long lead time to manufacture and if damaged during shipment there would be serious adverse effects on the project.

The shippers have requested that MARAD consider making changes in the following four areas of our policy:

First, the shippers request that MARAD formalize its current practice of not requiring transshipment for breakbulk cargoes that are either long lead time procurement or are critical items (LLIT&C). For the purposes of the proposed policy change, transshipment is defined as the off-loading of breakbulk cargo (cargo that is loose or non-containerized) from one vessel at an intermediate port and reloading the breakbulk cargo on a different vessel for delivery to final destination. It does not include cargo in containers, trailers, or barges where the entire conveyance is transferred from one vessel to another vessel. The shipper must provide us with sufficient acceptable documentation for us to make a determination that an item is long lead time procurement or critical items. Incorporating this practice into the formal policy will provide both shippers and carriers with clear guidance on the requirements.

Second, the shippers expressed a desire for a clear and predictable definition of ''reasonable rates'', as stated in PR–17, that will allow them to make a more accurate bid on their projects. Shippers state that PR–17 Guideline Rates should only apply to trade lanes where U.S.-flag liner breakbulk service is not available. Shippers requested that we establish a system for calculating guideline rates subject to PR–17 in much the same fashion as we provide for agricultural cargoes under the Cargo Preference Act of 1954, although the guideline rate would be expressed in dollars per revenue ton of cargo. MARAD has analyzed twenty actual voyages and several potential rate models. We believe a workable guideline rate system for PR–17 cargoes can be constructed within the basic framework of our current guideline rate regulations (46 CFR part 382). The modifications would tailor rates to more closely reflect the timing of the request, the requirements of the cargo, and vessels in, or potentially in, the trade.

Third, the shippers requested that we change the ''extend waiver to become a ''condition wavier. This waiver would only apply to specifically identified breakbulk over-dimensional (oversize and/or heavylift) cargoes and integral components that could not be handled by the existing U.S.-flag liner services and which are part of multiple shipments to the same project. We would consider granting such waivers only in those trade lanes in which U.S.-flag breakbulk service was not available on a liner basis. We would grant the proposed conditional waiver in advance for a period of up to two year unless a U.S.-flag breakbulk carrier subsequently offers service at or below the guideline rates that we establish. If a U.S.-flag vessel offers service at or below the guideline rates during the period of the conditional waiver, the U.S.-flag vessel would get the cargo if the carrier meets our conditions of carriage.

Fourth, the shippers recommend that any shipper wishing to obtain a waiver must provide us with all available cargo details including cargo value and rates, projected shipping time frame, and service requirements. Of this information, only essential cargo information will be posted on our web page. Carriers could then evaluate (1) The potential for combining various shippers' cargoes and (2) the economic feasibility of new U.S.-flag tonnage in that trade lane.

MARAD is seeking comments on whether we should incorporate these suggestions into our existing PR–17 waiver policy. Our goals for any new proposals are (1) The preservation of a cargo base financed by PR–17 for U.S.-flag vessels; (2) maximum export of U.S. manufactured goods; and (3) maintenance of a viable U.S.-flag merchant fleet for economic growth and national security.

We ask the public to comment on the above proposed shipper suggestions and the below proposed language which would incorporate the above shipper suggestions. This proposed revision to the policy language would not be expected to significantly change the current requirement for the collection of information approved under OMB Numbers 2133–0013 or 2133–0514.

Proposed Revised Policy Language

The Maritime Administration proposes to amend our policy governing the Criteria for Granting Waivers of the Requirement for Exclusive U.S.-flag Vessel Carriage of Certain Cargo Covered by Public Resolution 17 (PR–17), 73rd Congress, to read as follows:

1. Scope of Applicability

Public Resolution No. 17 provides that where an instrumentality of the Government makes loans or credit guarantees to foster the export of agricultural or other products, such products must be carried exclusively in vessels of the United States unless the Maritime Administration (we, us, or our) certifies to the lending agency that such vessels are not available as to numbers, tonnage capacity, sailing schedule or at reasonable rates. The Resolution is applicable to credits of the Export-Import Bank (Eximbank) or other Government instrumentalities for the purpose of financing the acquisition and shipment of United States products or services. The Eximbank must include in such credit agreement a requirement that shipments be made in United States flag vessels, except to the extent that we grant a waiver of the requirement as outlined in this policy statement. If the Eximbank receives a request for a waiver, it will refer the request to us.

2. Types of Waivers

The general process for all waiver requests is set forth in Appendix A. Guidelines for the information to be included in the waiver request are set forth in Appendix B. We will post the essential terms of applications for, and status of, all waiver requests and waivers on our web site. Security access to waiver information will be limited to bonafide U.S.-flag carriers.

(A) Statutory (Non-Availability) Waiver

When it appears that U.S. vessels will not be available within a reasonable

time or at reasonable rates, public or private foreign borrowers, or their representatives or their shippers in the United States may apply directly to our Office of Cargo Preference, for waiver of the U.S.-flag requirement. Requests for waivers must follow the format in Appendix B and must have a legal signature. We will make any necessary investigation to determine whether U.S.-flag vessels are available and will approve or deny the waiver request in writing. We may request additional information. Copies of approved waivers or denials will be sent to the Eximbank.

Such waivers will apply to the specifically approved cargo movements. Within thirty (30) calendar days of vessel loading, applicants or their designated representatives in the United States must report the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight amount, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, and total revenue tons, in the general form of Appendix F. A copy of the rated bills-of-lading must be attached to the report. The Eximbank Credit Number must be provided to the ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated ocean bill of lading.

We strongly encourage those public or private foreign borrowers, and/or their United States representatives or their shippers to meet with U.S. flag carriers and then to meet separately with our Office of Cargo Preference staff. During the meeting, we must receive full and complete information regarding the project, specifically identifying those cargoes for which a waiver might be sought. Appendix C lists the information that must be presented to us and the carriers. Waiver information will be posted on our web site for use by bonafide U.S.-flag carriers.

(B) General Waivers

In certain circumstances, although U.S.-flag vessels may be available, recipient nation vessels may be authorized to share in the ocean carriage of Eximbank financed movements, but not in excess of fifty percent (50%) of the total movement under the credit. Although allowing a recipient nation to share in this type of ocean carriage may reduce the U.S.-flag share, we may allow such participation if the recipient nation gives similar treatment to U.S. vessels in the trade of its foreign nation. When public or private foreign borrowers, or their U.S. representatives, or the primary U.S. shipper acting on behalf of the borrower desire a general waiver for partial use of the national flag vessels of the recipient nation, they must apply to our Office of Cargo Preference, for a General Waiver for the particular credit. When private interests apply, we may request sponsorship by a foreign government official of the recipient nation, to assure the recipient nation's responsibility to maintain fair and equitable treatment for U.S.-flag shipping.

(1) If we grant such waivers, they will apply only to vessels of recipient nation registry to the extent of their capacity to carry the cargo, based on normal flow of the traffic from interior through ports of shipment, but not in excess of fifty percent of the total movement under the credit. The U.S.-flag portion should be awarded first to ensure the minimum fifty percent (50%) requirement.

(2) General Waivers will normally apply throughout the life of the credit, but we or the Eximbank may reconsider the duration of the general waiver at any time in light of altered circumstances.

(3) The record of cargo distribution between U.S. and recipient national flag vessels will be based on (a) revenue tons and ocean freight revenue; and/or (b) such other units as appropriate.

(4) Applicants or their representatives in the United States must provide reports of movements to our Office of Cargo Preference, monthly. The reports must include the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, and total revenue tons in the general form of Appendix F. From time to time, we may change the data to be included on these reports to meet specific circumstances of the movements. Copies of the rated ocean bills-of-ladings must be attached. The Eximbank Credit Number must be provided to the underlying ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated copy of the underlying ocean bill of lading.

(5) We will not grant a General Waiver until our Office of Cargo Preference has received written confirmation of the applicant's agreement to the foregoing terms and conditions and has been advised of the name and address of the designee located in the United States who will be responsible for controlling the routing of the cargo and for providing the required monthly reports.

(6) General Waiver information will be posted on our web site for use by bonafide U.S.-flag carriers.

(C) Compensatory Waivers

When public or private foreign borrowers, or their U.S. representatives, or their shippers in the U.S., prior to a decision to seek an Eximbank credit agreement, in honest error or through extenuating circumstances as approved by us, move cargo for which a waiver is necessary to meet Eximbank financing requirements, the exporter may apply to our Office of Cargo Preference for a Compensatory Waiver. After investigation, we may grant a Compensatory Waiver whereby the exporter contracts in writing with us to move an equivalent or greater amount of revenue tons and ocean freight revenue of non-government impelled cargo on U.S.-flag vessels within a specified time period. If our Office of Cargo Preference determines that a U.S.-flag ocean carrier made the error, we may issue a retroactive Statutory Waiver.

Waiver recipients or their representatives in the United States must provide reports of movements to our Office of Cargo Preference, monthly. The reports must include the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, total revenue tons,in the general form of Appendix F. From time to time, we may change the data to be included on these reports to meet specific circumstances of the movements. Copies of the rated ocean bills-of-ladings must be attached. The Eximbank Credit Number must be provided to the ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated ocean bill of lading. All outstanding compensatory waiver amounts and shipper contact information will be published on our web site for use by bonafide U.S.-flag carriers.

(D) Conditional Waivers

Public or private foreign borrowers or their U.S. representatives or their shippers in the U.S. may apply to our Office of Cargo Preference for a Conditional Waiver of the U.S.-flag requirement if they find that no U.S.-

flag breakbulk vessel service will be available during their proposed project to carry multiple shipments of overdimensional cargoes. Such Conditional Waiver may be for the length of the project but not greater than two years from the date of any such waiver approval. Also, if during the course of executing the project, U.S.-flag breakbulk liner vessel service becomes unavailable to carry the multiple shipments of their overdimensional cargoes, the borrower or their shippers also may apply for such a Conditional Waiver.

Before we will grant a Conditional Waiver, the exporter must meet with the U.S.-flag carriers and then must meet separately with our Office of Cargo Preference staff, to provide full and complete information regarding the project, specifically identifying those cargoes on which the waiver is sought. Appendix C lists the information that must be presented to us and the carriers.

We will grant a Conditional Waiver only for those trade lanes in which no U.S.-flag breakbulk liner service is currently available. A Conditional Waiver will only cover specifically identified and approved overdimensional cargoes and integral components. If a U.S.-flag carrier that is willing to provide the shipper at least thirty (30) days notice and is willing to carry the cargo at a guideline rate that we calculate (see Appendix D), becomes available later, then that U.S.-flag carrier will be entitled to carry the cargo, provided the carrier meets our conditions of carriage.

Once we grant a Conditional Waiver, in order to meet the needs of the Eximbank, the shipper must provide us with the Export-Import Bank Credit Number and country, vessel name, registry, sailing date, load port, discharge port, cargo weight in kilos, cargo volume in cubic meters, revenue tons, FAS value of cargo, ocean freight, list of cargoes shipped, and a freighted copy of the ocean carrier's bills of lading for each voyage made under the terms of the Conditional Waiver. This information must be provided within fifteen (15) days of the date of loading. We will then issue a standard non-availability waiver letter, for presentation to the Eximbank, for each voyage. This standard non-availability waiver letter will cover only those cargoes specifically identified with projected shipping dates previously agreed to under the Conditional Waiver. A shipper wishing to place any additional cargoes on the same voyage must use the standard non-availability waiver procedure, detailed in Appendix A, paragraph A, with appropriate notice to the U.S. carriers. We will post waiver information on our web site for use by bonafide U.S.-flag carriers.

3. Considerations Influencing Approval of Applications for Waivers

(A) In evaluating applications for non-availability waivers under Paragraph 2(A) or conditional waivers under paragraph 2(D) we will consider:

(1) Whether the applicant followed the process set forth in Appendix A and provided the waiver information in Appendix B and met with the U.S.-flag carriers and with us at the beginning of the project to provide the information listed in Appendix C;

(2) Whether a carrier's proposed transshipment of Long Lead time or Critical Item cargoes constitute non-availability. However, the shipper must provide sufficient documentation acceptable to us to prove the cargoes meet the definition of Long Lead Time or Critical Items (Appendix E).

(3) Whether a non-liner breakbulk carrier's refusal to offer service at or below a guidelines rate may constitute non-availability. Upon application by the shipper, we will calculate a guideline rate for non-liner breakbulk service. The rate will be expressed as rate per revenue ton of cargo, as set forth in Appendix D. If a non-liner breakbulk carrier does not agree to carry the cargo at or below the guideline rate, we may deem the carrier not available for that specific cargo movement.

(4) The national policy of the United States, including the Merchant Marine Act, of 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit.

(B) In evaluating applications for General Waivers under Paragraph 2(B), we will consider:

(1) The treatment given U.S.-flag vessels in the trade with the recipient nation, particularly whether U.S.-flag vessels have equal opportunity compared to national flag or other foreign flag vessels to solicit and participate in movements controlled in the foreign nation; parity in the application of consular invoice fees, port charges and facilities; also parity of exchange treatment including the privilege of converting freight collections to dollars as needed. We will seek information from U.S. ship owners and other sources as to their experiences in the particular trade.

(2) The national policy of the United States, including the Merchant Marine Act, 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit.

(C) In evaluating applications for compensatory waivers under Paragraph 2(C), we will consider:

(1) The circumstances leading to the movement on a foreign flag vessel;

(2) The prior history of the exporter in shipping its government-impelled and commercial cargoes on U.S.-flag vessels;

(3) Any previous or current compensatory waivers used by the exporter and its efforts to comply with the terms of the previous or existing compensatory waivers; and

(4) The national policy of the United States, including the Merchant Marine Act, 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit;

(D) Non-compliance with the terms of a waiver may result in the cancellation of the current waiver and/or a refusal to grant future waivers and/or other appropriate actions, including debarment from government contracts. Civil or criminal fraud will be penalized under the appropriate United States Code section.

Attachments (these attachments are hereby incorporated into this policy):

Appendix A: Waiver Request Procedures
Appendix B: Waiver Request Required Information
Appendix C: Information and Communication Guide
Appendix D: Guideline Rate Policy
Appendix E: Definitions and Miscellaneous Information
Appendix F: Movement Reports Guide

Appendix A

(OMB No. 2133–0013 applies to this collection of information.)

Waiver Request Procedures

A. Statutory (Non-Availability) Waivers

1. The public or private foreign borrowers of their United States representative, receives or expects to receive Eximbank credit approval. (Note: Shipments could begin before the credit approval. See the section on Compensatory Waivers.) In the early stages of the project, either before or when the credit is approved, the shipper should meet with the U.S.-flag carriers and us and discuss the project cargoes detailing the information suggested in Appendix C. We will confirm the Eximbank Credit Number.

2. The shipper must present its Request for Quotation (RFQ) for ocean service to the carriers at least forty-five (45) calendar days in advance of the intended shipping date. For efficiency, the RFQ also should be sent to the Martime Administration. The RFQ must be presented at the same time and with the same information to all carriers, both U.S. and foreign. The RFQ must be given to all U.S.-flag carriers who may have service or could initiate service and should contain the most detailed information available regarding the commodities, sizes and weights. The shipper must give carriers at least fourteen (14) calendar days in which to respond.

3. The U.S.-flag carriers must respond to the RFQ within fourteen (14) calendar days either declining the cargo or providing an offer addressing both the rate quotations and the logistical needs expressed in the RFQ.

4. If the shipper cannot obtain service from a U.S.-flag carrier, the shipper may apply for a waiver from us. Such waiver application must be presented at least thirty (30) calendar days in advance of the intended shipping date. The request must contain all the required information as shown in Appendix B.

5. We will review the application, verify the waiver documentation provided by the shipper, investigate or request further information as necessary, and search the market for U.S.-flag carriers to handle the cargo.

6. We will either approve or deny the waiver in writing.

B. General Waivers

1. As set forth in Policy Statement paragraph 2(B), a foreign borrower or primary U.S. exporter who desires to make partial use of registered vessels of the recipient nation for a specific Eximbank credit must send our Office of Cargo Preference a written request.

2. We will make necessary investigations, including consultations with U.S.-flag carriers, to determine that parity of treatment is extended to U.S.-flag vessels in the trade of that foreign nation.

3. If we do not find discrimination, we will advise the applicant that we may grant a General Waiver upon receipt of written confirmation of the applicant's agreement to the terms and conditions set forth in Policy Statement paragraph 2 (B). When we receive the written confirmation, we will grant the General Waiver in writing with a copy to the Eximbank.

C. Compensatory Waivers

1. If a Compensatory Waiver is needed (Policy Statement paragraph 2 (C)), the shipper should apply to us in writing, stating the reasons, identifying the Eximbank Credit Number and country, and attaching freighted copies of the ocean bill of lading covering the applicable cargoes.

2. If, after investigation, we decide to grant a Compensatory Waiver, we will notify the shipper of the requirements. The shipper must then execute a written contract to meet those requirements.

3. Once we receive the written contract from the shippers, we will issue the waiver.

D. Conditional Waivers

1. An applicant for a Conditional Waiver (Policy Statement paragraph 2(D) must fulfill the conditions and information stated in Appendix C and must identify the specific overdimensional and integral component cargoes with projected shipping dates during the waiver time period. The shipper must search the market for U.S.-flag carriers to transport the identified cargoes. If the shipper cannot find such carriers, the shipper may apply in writing to us and must provide the information required in Appendix B and state the requested beginning and ending dates of the conditional waiver period. We must receive the application at least sixty (60) calendar days before the intended start of the requested Conditional Waiver period.

2. We will review the application in light of the information presented at the earlier meeting, will consult with the U.S. carriers, and will request additional necessary information.

3. We will calculate a Guideline Rate for the specific cargoes, as set forth in Appendix D, and will publish the Guideline Rate on our web site. If no U.S.-flag breakbulk liner carrier can be found, we will grant a Conditional Waiver for the agreed time period, conditions, and specific identified cargoes.

4. If at any time during the period of the Conditional Waiver, a U.S.-flag carrier gives at least a thirty (30) day notice to the shipper and us in which the U.S.-flag carrier offers to carry the cargo at or below the published guideline rate, the U.S.-flag carrier will be entitled to do so provided the carrier meets our appropriate and approved conditions of carriage.

5. Immediately after each shipment departs the load port, the shipper must give us an update of the remaining project cargoes previously approved under the Conditional Waiver and an update of the projected shipping dates.

6. To meet the needs of the Eximbank, once we grant a Conditional Waiver, the shipper must give us the Eximbank Credit Number and country, vessel name, registry, sailing date, load port, discharge port, cargo weight in kilos, cargo volume in cubic meters, revenue tons, FAS value of cargo, ocean freight, list of cargoes shipped, and a freighted copy of the ocean carrier's bill of lading for each voyage made under the terms of the Conditional Waiver. This information must be provided within fifteen (15) days of the date of loading. We will then issue a standard non-availability waiver letter for each voyage for presentation to the Eximbank. This standard non-availability waiver letter will cover only those cargoes specifically identified and previously agreed to under the Conditional Waiver. A shipper who wishes to place any additional cargoes on the same voyage must use the standard non-availability waiver procedure, detailed in Appendix A paragraph A, with appropriate notice to the U.S. carriers.

7. A shipper who needs additional time beyond the original Conditional Waiver period must apply for an extension by following steps 1 through 6 above. After investigation and consultation with the U.S. carriers, we may grant an extension.

Appendix B

(OMB No. 2133–0013 applies to this collection of information.)

PR–17 Statutory Waiver Request—Format

The below information is required to process a statutory waiver request. This information should be mailed or faxed to Office of Cargo Preference, Room 8118, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590. Fax number is 202–366–5522. Electronic mail address is cargo@marad.dot.gov

Re: ExImBank Credit No. (Enter the number)—Country (Enter Country name)

Applicant: (Name of company seeking the waiver. Should be the cargo shipper or beneficial owner. If a freight forwarder or other party makes the application, it must clearly state on whose behalf it is seeking the waiver and that it legally represents said party.)

Vessel: (Name of vessel you propose to use. Enter ''To Be Named'' if unknown. Note that actual vessel must be named before a final waiver is issued. Shippers should be aware that Pub.L. 105–383 prohibits the carriage of preference cargoes on substandard vessels. See the Maritime Administration web site.)

Registry: (Nation of registry of vessel. Enter ''To Be Named'' if unknown.)

Commodity: (Short one line description similar to Acquisition List line items. Attach detailed description as part of packing list or similar document.)

Weight: (Total weight in kilos. Attach details of individual shipping components with dimensions and weights as part of packing list or similar document.)

Volume: (Total volume in cubic meters. Attach details of individual shipping components with dimensions and weights as part of packing list or similar document.)

Revenue Tons: (Shipper's estimate of cargo revenue tons.)

Value of Shipment: (FAS value in U.S. dollars.)

Ocean Freight: (Actual or estimated ocean freight charges from carrier applicant proposes to use.)

Loading Port: (Desired port to load cargo.)

Loading Date: (Date when cargo will be ready to load.)

Discharge Port: (Desired port of destination of ocean carriers.)

Written Reason(s) for the Waiver Request with Documentation Supporting Each Reason Attached: The following language *must be included in any waiver request* above the signatory block:

This application is made for the purpose of inducing the United States of America to grant a waiver of Public Resolution 17 and the policy prescribed to carry out the provisions of PR–17. I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate and true.

Signature: _____

Name (typed): _____

Title: _____

Date: _____

The Following Documents Must Be Attached

1. Copy of the ''Request for Quotations (RFQ)'' package which the shipper sent to the carriers. Note it is preferable that the shipper send a copy of the RFQ to Maritime Administration at the same time it is sent to the carriers, in which case it is not necessary to attach another copy. The RFQ should contain the most detailed information available regarding the commodities, sizes and weights. A packing list is preferable.

2. A list of all carrier, with names of personnel, to whom the RFQ was sent.

3. Copies of any responses received from any U.S.-flag carriers.

4. Documentation supporting each reason justifying the need for a waiver. For example, a contract problem requires a copy of the applicable contract clauses; a letter of credit problem requires a copy of the L/C; U.S.-flag service not available requires copies of written declinations by the U.S. carriers; etc.

Note: The essential terms of the waiver application and cargo shipment information will be posted on the Maritime Administration web site but restricted to bonafide U.S.-flag cariers.

Note: The U.S. Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287). Civil fraud may incur fines of $10,000 plus 3 times damages and expenses of government recovery. Criminal fraud provides up to 5 years imprisonment. In addition, corporations may be debarred from further Government contracts.

Appendix C

(OMB No. 2133–0013 applies to this collection of information.)

Information and Communication

At the beginning of a project shippers should (required for Conditional Waivers):

—Meet with the U.S.-flag ocean carriers
—Meet with the Maritime Administration

Purpose:

—Layout project in as much detail as possible
—Discuss contract requirements
—Discuss any unique or expected problem requirements
—Provide best estimates, details, pictures of types of cargo
—Identify any long lead time or critical items
—Discuss what cargoes should move together and why
—Discuss anticipated shipment dates tied to project schedules
—Discuss items which it is doubtful U.S. carriers can handle & alternatives
—Obtain carrier capabilities & alternatives
—Establish and maintain a dialogue with U.S.-flag carriers

Note: For Conditional Waivers, the shipper must specify the projected overdimensional cargoes and integral components and specify their projected shipping dates.

In addition, for the Maritime Administration meeting:

—Discuss potential waivers, if applicable
—Discuss reporting requirements
—Establish a working relationship with Maritime Administration

The essential information will be posted on the Maritime Administration web site.

As the project progresses, keep the carriers and Maritime Administration informed of progress related to initial projections and unforeseen problems as they arise.

Increased understanding of each party's objectives and capabilities will establish better communications and create a smoother/faster process.

Appendix D

(OMB No. 2133–0013 and 2133–0514 apply to this collection of information.)

Once a shipper requests a Conditional Waiver of the U.S.-flag requirement of PR–17, we will calculate a guideline rate or rates as part of the waiver process. The guideline rate will be for the proposed movement of a specific cargo or cargoes on a specific voyage or voyages on U.S.-flag non-liner breakbulk vessels. For the purpose of this PR–17 policy, the guideline rates will be calculated using the basic framework contained in the Maritime Administration regulations at 46 CFR 382.3, except as follows:

1. We calculate the guideline rate based on a vessel or group of vessels we determine is most suited to the cargo and destination.

2. Costs will be indexed to the year of cargo carriage.

3. The calculation will assume, unless we determine otherwise, that the cargo occupies seventy percent of the cubic capacity of the selected vessel(s).

4. The rate will be specified in U.S. dollars per revenue ton.

Appendix E

(OMB No. 2133–0013 applies to this collection of information.)

Definitions

The following definitions apply to this PR–17 policy.

Critical Item Cargo: A product whose non-availability to support the required installation date would cause the project to shut down or to incur substantial liquidated damages.

Foreign Borrower: A foreign government, corporation, or person who is the recipient of a loan or credit guarantee by an instrumentality of the United States.

Liner Service: A service provided on an advertised schedule giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

Long Lead Time Cargo: A product which, if damaged during shipment, would require more than six (6) months to repair or remanufacture and which is not available sooner from the shipper's inventory or from any other manufacturer.

Ocean Carrier: The operator of the ocean vessel which carries the cargo between one or more United States ports and one or more foreign ports.

Overdimensional Cargo: A specific piece of cargo is considered overdimensional or out-of-gauge when one or more of its dimensions exceed the interior dimensions of a standard maritime industry forty-foot container or the cargo weight exceeds 39 metric tons.

Revenue Ton: A metric ton or cubic meter of cargo, whichever yields the greatest revenue to the ocean carrier.

Shipper: A person or company who contracts with a shipping line or shipowner for the carriage of cargo.

Transshipment: The offloading of breakbulk cargo from one vessel at an intermediate port and reloading the breakbulk cargo on a different vessel for delivery to final destination. It does not include cargo in containers, trailers, or barges where the entire conveyance is relayed form one vessel to another vessel under a through bill of lading.

BILLING CODE 04910–81–P

APPENDIX F
(OMB No. 2133-0013 applies to this collection of information)

U.S. Department of Transportation
Maritime Administration

MONTHLY REPORT OF OCEAN SHIPMENTS MOVING UNDER EXPORT-IMPORT BANK FINANCING

OMB NO. 2133-0013
Public reporting burden of this collection of information is estimated to average 30 minutes per response. Send comments regarding this burden estimate or any other aspect of this information collection to the Maritime Administration, Office of Management Services, 400 Seventh Street, S.W., Room 7225, Washington, DC 20590, and to the Office of Management and budget, Paperwork Reduction Project (2133-0013), Washington, DC 20503.

SHIPMENT DURING MONTH OF: _____
SHIPMENTS TO: (Name of Country) _____
EXPORT-IMPORT CREDIT NO. _____
DATE OF THIS REPORT: _____
FROM: _____
SUBMITTED: _____

Loading Date	Load Port	Discharge Port	Name of Vessel	Registry	Brief Description of Cargo	Value of Cargo	Metric Tons (2204 lbs)	Cubic Meters	Revenue Tons	Ocean Freight Charges (USA $)

STATUS OF SHIPMENTS TO DATE

	UNITED STATES FLAG			RECIPIENT FLAG			THIRD FLAG		
	Value of Cargo	Revenue Tons	Ocean Freight Charges	Value of Cargo	Revenue Tons	Ocean Freight Charges	Value of Cargo	Revenue Tons	Ocean Freight Charges
Prior Cumulative Totals									
This Report									
Grand Total									

FORM MA-518 (Rev. 7-94)

By Order of the Maritime Administrator.

Dated: August 14, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–21045 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–81–C

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2000–6944 (Notice No. 00–9)]

Information Collection Activities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request approval from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before October 20, 2000.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the Docket Number RSPA–2000–6944 and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket number ''RSPA–2000–6944''.

The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed at the address above between the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. In addition, the Notice and all comments can be reviewed on the Internet by accessing the Hazmat Safety Homepage at ''http://hazmat.dot.gov.''

Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), at the address and telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for extension. The collections are contained in the Hazardous Materials Regulations (HMR; 49 CFR 171–180). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels for adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collection requests:

Title: Hazardous Materials Shipping Papers & Emergency Response Information.

OMB Control Number: 2137–0034.

Summary: This information collection consolidates and describes the information collection provisions in parts 172, 174, 175, 176, and 177 of the HMR on the shipping paper and emergency response requirements for the transportation of hazardous materials in commerce. Shipping papers and emergency response information are a basic communication tool used in the safe transportation of hazardous materials. They serve as a principal means of identifying hazardous materials during transportation, including emergencies, by providing the proper shipping name, hazard class, UN or NA identification number, packing group and quantity of each hazardous material being transported. Shipping papers also provide emergency response information for use in the mitigation of an incident, and an emergency response telephone number for use in the event of an emergency. The telephone number must be monitored at all times the hazardous material is in transportation, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who posses such knowledge and information. Shipping papers also serve as a means of notifying transport workers that hazardous materials are present, so that the proper loading, unloading, handling and safety procedures may be followed.

Affected Public: Shippers and carriers of hazardous materials in intrastate, interstate, and foreign commerce.

Annual Reporting and Recordkeeping: 6,500,000.

Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,500,000.

Frequency of Collection: Annually.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: This information collection consolidates and describes the information collection provisions in the HMR (49 CFR parts 171–180) involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Annual Reporting and Recordkeeping Burden: 14,480.

Number of Respondents: 3,807.

Total *Annual Responses:* 21,319.

Total *Annual Burden Hours:* 14,480.

Frequency of Collection: Periodically.

Issued in Washington, DC, on August 15, 2000.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 00–21134 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 9, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 20, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0975.

Form Number: IRS Form 1120–W.

Type of Review: Revision.

Title: Estimated Tax for Corporations.

Description: Form 1120–W is used by corporations to figure estimated tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 900,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form
1120–W	7 hr., 53 min.	1 hr., 12 min.	1 hr., 22 min.
1120–W, Sched. A (Part I)	11 hr., 14 min.	47 min.	1 hr., 0 min.
1120–W, Sched. A (Part II)	23 hr., 26 min.	18 min.	41 min.
1120–W, Sched. A (Part III)	5 hr., 15 min.	0 min.	5 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 9,469,690 hours.

OMB Number: 1545–1538.

Notice Number: Notice 97–34.

Type of Review: Extension.

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

Description: This notice provide guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,750 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–21143 Filed 8–18–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 16, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Submit written comments on or before September 20, 2000.

OMB Number: 1550–0060.

Form Number: OTS Form H(b)11.

Type of Review: Regular.

Title: Savings Association Holding Company Report.

Description: The H(b)11 Report is used to determine a savings association holding company's adherence to the statutes, regulations, and conditions of approval to acquire an insured institution and whether any of the company's activities would be injurious to the operation of any subsidiary savings association.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 932 responses.

Estimated Burden Hours Per Response: 62 hours.

Frequency of Response: Quarterly per respondent.

Estimated Total Reporting Burden: 57,784 hours.

Clearance Officer: Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 00–21132 Filed 8–18–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 16, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Submit written comments on or before September 20, 2000.

OMB Number: 1550–0072.

Form Number: OTS forms 1522 (MHC–1) and 1523 (MHC–2).

Type of Review: Regular.

Title: Mutual Holding Company.

Description: The information collections apply to mutual holding companies and to their subsidiaries. The collections are necessary to (1) fulfill statutory requirements; and (2) facilitate review of transactions presenting risks.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 75 responses.

Estimated Burden Hours Per Response: 58 hours.

Frequency of Response: Once per submission.

Estimated Total Reporting Burden: 4,318 hours.

Clearance Officer: Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 00–21133 Filed 8–18–00; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 65, No. 162

Monday, August 21, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; General Building Contractors, Heavy Construction, Except Building, Dredging and Surface Cleanup Activities, Special Trade Contractors, Garbage and Refuse Collection, Without Disposal, and Refuse Systems; Correction

Correction

In rule document 00–20475 beginning on page 49726 in the issue of Tuesday, August 15, 2000, make the following correction:

§121.201 [Corrected]

On page 49726, in the third column, in §121.201, in the table, in the second column, in the third entry, ''17.01'' should read ''17.0[1]''.

[FR Doc. C0–20475 Filed 8–18–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–25]

Establishment of Class D and Class E Airspace, and Amendment to Class E Airspace; Garden City, KS

Correction

In proposed rule document 00–20166, beginning on page 48651, in the issue of Wednesday, August 9, 2000, make the following correction:

§71.1 [Corrected]

On page 48652, in the first column, § 71.1, in the third heading, ''**ACE KS E2 Garden City, KS [New]** '' should read '' **ACE KS E4 Garden City, KS [New]** ''.

[FR Doc. C0–20166 Filed 8–18–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 125

[Docket No. 29104; Amendment Nos. 91–264, 121–275, 125–33 & 129–28]

RIN 2120–AF81

Repair Assessment for Pressurized Fuselages

Correction

In rule document 00–10220 beginning on page 24108 in the issue of Tuesday, April 25, 2000, make the following corrections:

§91.410 [Corrected]

1. On page 24125, in the third column, in §91.410(a)(3), in the first line, ''25,000'' should read ''25,500''.

§121.370 [Corrected]

2. On page 24126, in the first column, in §121.370(a)(3), in the first line, ''25,000'' should read ''25,500''.

§125.248 [Corrected]

3. On the same page, in the second column, in §125.248(a)(3), in the first line, ''25,000'' should read ''25,500''.

[FR Doc. C0–10220 Filed 8–18–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
August 21, 2000

Part II

Social Security Administration

20 CFR Parts 404 and 416

Revised Medical Criteria for Evaluating Mental Disorders and Traumatic Brain Injury; Final Rules

Rescission of Social Security Acquiescence Rulings 92–3(4), 93–1(4) and 98–2(8); Notice

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960–AC74

Revised Medical Criteria for Evaluating Mental Disorders and Traumatic Brain Injury

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These rules revise our regulations for evaluating mental impairments. They also change some of the provisions of our Listing of Impairments (the Listings) that we use to evaluate mental disorders in adults. We also are adding guidance to the adult neurological listings regarding the evaluation of traumatic brain injury. In addition, the rules make technical changes to the adult digestive listings and the childhood mental disorders listings. We expect that these rules will clarify the intent and purpose of the listings for evaluating mental disorders, and will simplify our adjudication of claims involving mental impairments. These rules also recognize the sometimes unpredictable course of traumatic brain injury, and will improve our adjudication of claims involving traumatic brain injuries.

DATES: These rules are effective September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Barnes, Social Insurance Specialist, Office of Disability, Social Security Administration, 3-B–8 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4171, email deborah.barnes@ssa.gov, or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

Title II of the Act provides for the payment of disability benefits to three groups of individuals: Workers insured under the Act; children of insured workers; and widows, widowers, and surviving divorced spouses of insured workers. Title XVI of the Act provides for supplemental security income (SSI) payments on the basis of disability to adults and to children. For individuals claiming title II disability benefits and for adults claiming SSI disability payments, ''disability'' means the inability to do any substantial gainful activity (SGA). We will consider a child claiming SSI disability payments ''disabled'' if he or she has an impairment(s) that causes ''marked and severe functional limitations.'' Under both title II and title XVI, disability must be by reason of a medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

The Listings describe, for each of the major body systems, examples of impairments we consider severe enough to prevent an adult from doing any gainful activity, or that cause marked and severe functional limitations in a child. The Listings are divided into part A and part B. We apply the medical criteria in part A when we assess the claims of adults. We may also use the criteria in part A when we evaluate SSI childhood disability claims if the disease processes have a similar effect on both adults and children. However, when we evaluate childhood disability claims, we first use the criteria in part B; if those criteria do not apply, we then use the criteria in part A. (See §§ 404.1525 and 416.925).

We last published final rules containing comprehensive revisions to the adult mental disorders listings in the **Federal Register** on August 28, 1985 (50 FR 35038). In the preamble to those rules, we indicated that medical advancements in disability evaluation and treatment and program experience would require that the mental disorders listings be periodically reviewed and updated. We published a Notice of Proposed Rulemaking (NPRM) on July 18, 1991 (56 FR 33130), and invited interested persons, organizations, and groups to submit their comments on the NPRM within 60 days.

We received over 120 letters from individuals and groups commenting on the proposed rules. The commenters generally supported most of the proposed changes, but objected to certain aspects of the proposed rules.

We have carefully considered all of the public comments and are adopting parts of the proposed rules with modifications. Since we published the NPRM, there have been both medical and legislative changes that require us to review some of our proposed revisions again. For example, the American Psychiatric Association's publication of the Fourth Edition of the ''Diagnostic and Statistical Manual of Mental Disorders'' (DSM-IV) in May 1994 impacts directly on our proposal to incorporate terminology from the DSM Third Edition-Revised (DSM-III-R). The changes made to the childhood disability program by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, affects our proposal to extend use of the special technique for evaluating mental impairment severity to childhood mental disorders claims evaluated under part B of the Listings.

Consequently, we are deferring action on the proposed revisions that are not finalized by these regulations. We are not incorporating DSM-III-R terminology or establishing a new psychoactive substance dependence listing (listing 12.09) with its own paragraph A diagnostic criteria and paragraph B functional criteria. We are reassessing this latter proposal as a result of the provisions of Public Law 104–121 that prohibit eligibility for disability benefits when drug addiction or alcoholism (DAA) is a contributing factor material to the determination of disability. We are not incorporating the ''capsule definition'' into the paragraph A diagnostic criteria of each listing, although we have addressed the relevance of the capsule definition in these final rules. We are not providing definitions of the scale points in §§ 404.1520a and 416.920a or expanding application of the special technique we use to evaluate adult mental disorders to the childhood mental disorders listings. Finally, we are not adding criteria to listing 12.07 to address eating and tic disorders.

In these final rules, we are revising the third and fourth paragraph B functional criteria in each listing. We are adding paragraph C functional criteria to listings 12.02 (Organic Mental Disorders) and 12.04 (Affective Disorders). We are standardizing at two the number of paragraph B criteria that an impairment must satisfy to meet a listing. In §§ 404.1520a and 416.920a, we are modifying the B criteria rating scales and the requirements for documenting application of the technique at all review levels. We also are deleting certain provisions that address issues that already are covered in other regulations. We are adding a new paragraph F in the introductory text to the neurological listings that discusses the evaluation of traumatic brain injury. We also are making changes to and reorganizing the introductory text to the mental disorders listings.

We discuss below the significant differences between the proposed rules and final rules. We also respond to the significant public comments on these final rules. We will consider the public comments we received on the proposed revisions that we are not finalizing by

these regulations as we reassess those proposals.

The revised adult mental disorders listings (and other listings) in these rules will be effective until July 2, 2001, unless they are extended by the Commissioner or revised and promulgated again.

Explanation of the Final Rules

Sections 404.1520a and 416.920a Evaluation of Mental Impairments

We revised and clarified our rules in these sections on the procedure we use to evaluate the severity of mental impairments. We made revisions in response to public comments, to clarify the proposed language, and for technical reasons. However, the final rules do not include our proposal to expand application of the technique to include evaluation of mental impairment severity under the childhood mental disorders listings. The final rules also do not provide definitions for the scale points, as we proposed. As in the NPRM, we use the term ''technique'' throughout these sections to facilitate our discussion of this procedure.

Final §§ 404.1520a(a) and 416.920a(a), ''General,'' are essentially the same as in the prior rules, except for editorial changes that reflect our decision not to apply the technique to childhood mental disorders claims evaluated under part B of the Listings.

Final §§ 404.1520a(b) and 416.920a(b), ''Use of the technique,'' provide basic information about the application of the technique. They explain that we must first evaluate the evidence to determine whether an individual has a medically determinable mental impairment(s), demonstrated by pertinent symptoms, signs, and laboratory findings. If we determine that an individual has a medically determinable mental impairment(s), we must specify the symptoms, signs, and laboratory findings substantiating its presence. Then, we will rate the degree of functional limitation resulting from that impairment(s) and record our findings as set out in §§ 404.1520a(c) and (e) and 416.920a(c) and (e).

In the final rules, we simplified proposed §§ 404.1520a(b)(1) and 416.920a(b)(1), which contained a number of sentences addressing different issues. Final §§ 404.1520a(b)(1) and (b)(2) and 416.920a(b)(1) and (b)(2), which describe the basic technique, contain the first four sentences of proposed §§ 404.1520a(b)(1) and 416.920a(b)(1), with minor editorial changes.

We deleted the fifth sentence of proposed §§ 404.1520a(b)(1) and 416.920a(b)(1) because it was redundant of the fourth sentence. We also deleted the seventh sentence, which referred to the evaluation of childhood mental impairments. We incorporated the sixth sentence, which describes how we rate the degree of functional limitation, in final §§ 404.1520a(c) and 416.920a(c).

We incorporated the four sentences in proposed §§ 404.1520a(b)(2), with some revisions, in final §§ 404.1520a(c)(3) and (4) and 416.920a(c)(3) and (4). Final §§ 404.1520a(b)(2) and 416.920a(b)(2) now state that we must rate the degree of limitation in accordance with final §§ 404.1520a(c) and 416.920a(c) and record our findings as set out in final §§ 404.1520a(e) and 416.920a(e).

We deleted proposed §§ 404.1520a(b)(3) and 416.920a(b)(3) in which we had defined the rating scale points for each of the first three functional areas. We also deleted proposed §§ 404.1520a(b)(4) through (7) and 416.920a(b)(4) through (7) in their entirety, since they addressed rating scale points for assessing the degree of limitation for childhood mental impairments evaluated under part B of the Listings.

As we explain in more detail in the public comments section of this preamble, we expanded final §§ 404.1520a(c) and 416.920a(c), ''Rating the degree of functional limitation,'' to respond to many comments we received about the technique. In final §§ 404.1520a(c)(1) and 416.920a(c)(1), we explain that the assessment of functional limitations is a complex and highly individualized process requiring consideration of multiple issues. We stress that in addition to symptoms, signs, and laboratory findings, we consider other factors, such as the effects of chronic mental disorders, structured settings and the effects of medication and other treatment. We also stress that we must consider the individual's functioning over time.

We provide further detail about these principles in final §§ 404.1520a(c)(2) and 416.920a(c)(2). The first sentence explains that when we rate the degree of functional limitation, we consider the extent to which the individual's impairment or combination of impairments interferes with the ability to function independently, appropriately, effectively, and on a sustained basis. The second sentence explains that we will consider factors including the quality and level of the individual's overall performance, any episodic limitations, the amount of supervision or assistance required, and the settings in which the individual can function. The third sentence provides a cross-reference to 12.00C through 12.00H of the introductory text to the adult mental disorders listings for more information about the factors we consider.

Final §§ 404.1520a(c)(3) and 416.920a(c)(3) are based on the first sentence of proposed §§ 404.1520a(b)(2) and 416.920a(b)(2). They list the four functional areas we consider (activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation) when we employ the technique.

Final §§ 404.1520a(c)(4) and 416.920a(c)(4) explain that we will use a five-point scale (none, mild, moderate, marked, and extreme) when we rate the degree of limitation in the first three functional areas (i.e., all but ''episodes of decompensation''). We also include the statement from the last sentence of §§ 404.1520a(b)(3) and 416.920a(b)(3) of the prior rules, which we had included in the NPRM. However, we revised the statement in response to comments. Instead of providing that the last two points of the five-point rating scale represent degrees of limitation that are incompatible with the ability to do a work-related function, the final rules provide that the last point of the scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. We explain our reasons for this change in the public comments section of this preamble.

Final §§ 404.1520a(d) and 416.920a(d), ''Use of the technique to evaluate mental impairments,'' correspond to prior §§ 404.1520a(c) and 416.920a(c) and proposed §§ 404.1520a(c) and 416.920a(c). In the final rules, we revised the language that related to proposed changes in the rating scale points and deleted proposed §§ 404.1520a(c)(2) and 416.920a(c)(2) in their entirety.

Final §§ 404.1520a(d)(2) and 416.920a(d)(2), which explain how we determine whether an impairment meets or is equivalent in severity to a mental listing, correspond to prior §§ 404.1520a(c)(2) and 416.920a(c)(2) and proposed §§ 404.1520a(c)(3) and 416.920a(c)(3). In response to a comment, the final rules contain the first sentence of prior §§ 404.1520a(c)(2) and 416.920a(c)(2), slightly edited. The sentence explains that we will determine whether an impairment meets or is equivalent in severity to a listing if we first determine that the individual has a severe impairment(s). We also revised the second sentence slightly for context.

Final §§ 404.1520a(d)(3) and 416.920a(d)(3) correspond to prior §§ 404.1520a(c)(3) and 416.920a(c)(3)

and proposed §§ 404.1520a(c)(4) and 416.920a(c)(4). These sections explain that we will make a residual functional capacity (RFC) assessment whenever an individual has a severe impairment or combination of impairments that neither meets nor is equivalent in severity to any listing. In the NPRM, we had replaced the reference to a ''residual functional capacity'' assessment with a more generic reference to a functional assessment in order to include children. Also in response to a comment, we further revised the sentence proposed in the NPRM and deleted the last phrase (''when appropriate to the category of claim being assessed''). The phrase suggested that in some cases we would not do RFC assessments of individuals who have severe impairments that neither meet nor are equivalent in severity to any listed impairment. In fact, we always do RFC assessments in these circumstances.

Final §§ 404.1520a(e) and 416.920a(e), ''Documenting application of the technique,'' correspond to prior §§ 404.1520a(d) and 416.920a(d), ''Preparation of the document,'' and proposed §§ 404.1520a(d) and 416.920a(d). The final rules, like the NPRM, explain that we must complete a standard document showing the application of the technique in each case at the initial and reconsideration levels of the administrative review process. At the hearings and appeals levels, administrative law judges and the Appeals Council must record the application of the technique in their decisions. We revised the heading slightly from the NPRM (from ''this technique'' to ''the technique'') for consistency. We also made editorial revisions in the two sentences that make up the paragraph.

In final §§ 404.1520a(e)(1) and 416.920a(e)(1) (proposed §§ 404.1520a(d)(1) and 416.920a(d)(1)), we clarified the provisions addressing the role of the disability examiner in preparing the standard document. However, we retained the basic provision, which permits the disability examiner to assist the medical or psychological consultant in preparing the form. We describe the revisions and our response to the comments we received on the proposed rules in the public comments section of this preamble. In a technical correction, we revised the opening phrase of the first sentence to make it clearer that the medical or psychological consultant has overall responsibility for assessing medical severity at the reconsideration level except when a disability hearing officer makes the determination. When a reconsideration determination is made by a disability hearing officer, the disability hearing officer has overall responsibility for assessing medical severity.

Final §§ 404.1520a(e)(2) and 416.920a(e)(2) (proposed §§ 404.1520a(d)(2) and 416.920a(d)(2)), which describe what administrative law judges and the Appeals Council must include in their decisions to document the technique, are substantively unchanged from the NPRM. We made minor editorial corrections and revised the cross-references to reflect the organization of the final rules.

We made a number of changes in final §§ 404.1520a(e)(3) and 416.920a(e)(3) (proposed §§ 404.1520a(d)(3) and 416.920a(d)(3)) in response to public comments. We proposed revisions to the procedures under which administrative law judges may return cases to the State agencies. We describe these revisions and our reasons for making them in the public comments section of this preamble. We also made minor, nonsubstantive editorial revisions in the paragraph.

Appendix 1 to Subpart P—Listing of Impairments

11.00F Traumatic Brain Injury (TBI)

As in the proposed rules, the final rules include a new 11.00F in the preface to the adult neurological listings that provides guidance for the evaluation of cases involving traumatic brain injury (TBI). In response to a comment, we changed the heading of the final section from the proposed ''Cerebral trauma.''

TBI cases are evaluated under reference listing 11.18, ''Cerebral trauma.'' Final 11.00F recognizes the sometimes unpredictable course of TBI during the first few months post-injury. Thus, final 11.00F provides three situations for evaluating disability based on alternative possible courses. First, it explains that the neurological impairment may be so profound following the trauma that it will be possible to decide immediately that an individual is disabled. Second, it explains that if there is not such a profound initial neurological impairment, we will defer adjudication of the claim until we obtain evidence of any neurological and mental impairments at least 3 months post-injury. Third, if a finding of disability is still not possible at 3 months post-injury, we will again defer adjudication of the claim until we obtain evidence at least 6 months post-injury.

We made a number of editorial clarifications in final 11.00F, partly in response to comments and partly for clarity and precision of the final language. None of the changes are substantive. For instance, we deleted the word ''listing'' in all but one place to be consistent with the style of other paragraphs of the listings. We also replaced such phrases as ''make a final adjudication'' and ''favorable decision,'' which have other connotations in our program, with more accurate phrases, such as ''adjudicate the claim'' and ''finding of disability.'' Among other changes, we also revised 11.00F to make it clear that an individual with TBI may have a neurological or a mental impairment, or both.

The most extensive editorial revision is to the second paragraph of proposed 11.00F, which consisted of ten sentences that addressed more than one subject. In final 11.00F, we divided the proposed second paragraph into two paragraphs (the second and third paragraphs of final 11.00F). We also reorganized the sentences of the proposed paragraph so that each paragraph addresses one subject. Thus, the second paragraph of final 11.00F includes the first, second, third, fifth, sixth, and seventh sentences of the NPRM, which describe the variable course of TBI. The third paragraph includes the fourth, eighth, ninth, and tenth sentences, which explain when we will proceed with adjudication and when we will defer adjudication.

12.00 Mental Disorders

The final listings do not include all of the substantive revisions we had proposed. The proposed revisions reflected evolving medical knowledge of the characteristics of mental disorders and their treatment and management. They also reflected the program experience we have gained in monitoring and evaluating the prior listings.

For example, in the proposed revisions, we had updated the medical terms used to describe the major mental disorders and their characteristics and symptoms to conform to the nomenclature in the DSM–III–R published by the American Psychiatric Association. The DSM is widely used by psychiatrists, psychologists, and other mental health professionals. It provides a common basis for communication and facilitates our evaluation of medical reports when we make determinations of disability.

The American Psychiatric Association has an ongoing process to update the DSM. The fourth edition of the DSM (DSM–IV) was published in May 1994. We decided to publish these final rules without the changes we had proposed, rather than further delay them to

incorporate any additional changes in the terminology and diagnostic criteria from the DSM–III–R to the DSM–IV. In the meantime, we are reviewing those changes in the DSM–IV that pertain to our listings to determine whether we need to revise these final listings at a future date.

We retained one substantive change from the proposed listings; the final rules make the requirement for limitations in two of the areas under paragraph B the uniform standard for all listings that employ paragraph B functional criteria.

One nonsubstantive change we made from the proposed listings was to separate mental retardation and autistic disorder and other pervasive developmental disorders into two listings, listings 12.05 and 12.10, respectively. We discuss this change in detail in the summary below and in the public comments section of this preamble.

The following is a detailed description of the changes in each section.

12.00 Preface

12.00A Introduction

Final 12.00A, ''Introduction,'' describes the structure of the listings and explains how we apply them. This section also provides guidance about the severity of the listings, how we determine equivalence, and how we determine residual functional capacity (RFC). In the final rules, we updated the list of titles of the listing categories to reflect the change in 12.05 and the addition of 12.10. We also updated the list of listings with paragraph C criteria. In addition, we expanded the discussion regarding the application of the paragraph B and C criteria. We now specify that the evaluation of functional limitations must be done by applying the paragraph B criteria first. We will apply the paragraph C criteria only if we find that the paragraph B criteria are not satisfied. Because final listing 12.09, ''Substance addiction disorders,'' remains a reference listing, we restored the description of the listing found in the prior rules. We also added a description of the structure of listing 12.05, ''Mental retardation,'' because it is the only other listing that does not employ the same paragraph A-paragraph B system as the other mental disorders listings in all of its sections. However, we clarified the proposed description in the final rules in response to public comments about the listing itself. The description in the final rules also reflects the fact that we removed ''autistic disorder and other pervasive developmental disorders'' from listing 12.05 and placed them in a separate listing 12.10. We did this both in response to a public comment and for consistency with the childhood mental disorders listings. We discuss this change in greater detail in the public comments section of this preamble.

We also explain in final 12.00A that the listings contain examples of disorders that are considered severe enough to preclude an individual from doing any gainful activity. If an impairment does not meet the requirements of a listing, we will determine whether the individual's impairment(s) is equivalent in severity to a listed impairment. We revised the discussion regarding determinations of equivalence in the sixth paragraph of final 12.00A because some of the comments about proposed listing 12.09 indicated that there could be confusion about how we evaluate a medically determinable severe mental impairment that does not satisfy all of the paragraph A criteria of a particular listing. The last sentence now states that in such cases, the assessment of the paragraph B and C criteria is critical to a determination of equivalence.

12.00B Need for Medical Evidence

Final 12.00B, as in the prior rules, repeats basic principles of disability evaluation that are set out in the regulations, but focuses specifically on the evaluation of mental disorders. It describes the need to establish the existence of a medically determinable impairment of the required duration, and defines the terms ''symptoms'' and ''psychiatric signs.'' It also explains that symptoms and signs generally cluster together to constitute the recognizable mental disorders described in the listings. This section also provides a reminder that symptoms and signs may be intermittent or continuous.

In response to a comment, we revised the third sentence of proposed 12.00B to indicate that the specific psychological abnormalities named in the sentence are only examples of such abnormalities. The sentence does not contain an all-inclusive list. We also revised the examples of abnormalities in response to a comment and updated the terminology. We also deleted the example of psychiatrists and psychologists as appropriate medical sources. We describe all of these changes in the public comments section of this preamble.

12.00C Assessment of Severity

This section explains how we assess severity under the listings using the paragraph B and C functional criteria. It briefly defines the term ''marked'' and describes each of the four functional areas in detail. Throughout final 12.00C, as in the NPRM, we incorporated references to the ability to sustain function. This reflects more clearly our longstanding policy that the ability to sustain function is essential to the effective performance of the function.

The opening paragraph of final 12.00C is substantively the same as in the prior rules. As in the NPRM, we simplified and clarified it without any change in meaning. In response to a comment, we replaced the descriptive ''ability to tolerate increased mental demands associated with competitive work or other stressful circumstances,'' with the more accurate and simpler heading of the fourth functional criterion, ''episodes of decompensation,'' in the list of the four functional areas. We explain our reasons for this revision in the public comments section of this preamble under the comments about 12.00C4. We also moved the cross-reference to §§ 404.1520a and 416.920a to the end of the paragraph.

Final 12.00C1 describes the first paragraph B criterion, activities of daily living. The final paragraph is different from the prior rules in only one respect. The example at the end of the second paragraph of the section in the prior rules was too narrow; therefore, we had revised the example in the NPRM. In response to a comment about that revised example, however, we replaced it with a more comprehensive and descriptive example.

Final 12.00C2 describes the second paragraph B criterion, social functioning. Except for editorial changes, the final paragraph is the same as the prior rules and the NPRM.

Final 12.00C3 describes the third paragraph B criterion, concentration, persistence, or pace. The title of the final paragraph does not reflect the change we had proposed in the NPRM, ''Task completion.'' However, we made it consistent with §§ 404.1520a, 416.920a, and the listings themselves by changing the ''and'' to ''or.'' The final paragraphs incorporate most of the proposed revisions. We also clarified how we assess concentration, persistence, or pace in work evaluations.

The prior paragraph 12.00C3 consisted of eight sentences. We simplified final 12.00C3 by dividing the sentences into separate paragraphs. In addition, we made a number of revisions in the final rules in response to public comments. Besides revising the proposed text in response to the comments, we also added two paragraphs to the final rules. The

revisions remove the example of ''everyday household routines'' in the first paragraph of proposed 12.00C3, and explain that an individual's ability to function in settings other than work settings is important. They also provide more information about how we evaluate such activities. The revisions provide guidance about the need to consider all relevant evidence, and such factors as whether the individual is functioning in a structured setting. In addition, we clarified that we meant our reference in the first paragraph of proposed 12.00C3 to ''direct psychiatric examination'' to include clinical examinations performed by psychologists. We also restored the three examples of work tasks from the prior rules, and we added a reference to ''serial threes'' as a test of concentration. We describe all of these changes in detail, and our reasons for making them, in the public comments section of this preamble.

Final 12.00C4 describes the fourth paragraph B criterion, and the first paragraph C criterion, episodes of decompensation. As in the NPRM, we deleted the reference to ''work or work-like settings'' because episodes occurring outside these settings can be equally useful in assessing an individual's ability to work and because, as a practical matter, the information in cases does not often come from observations in work or work-like settings.

We substantially revised final 12.00C4 in response to many public comments we received about the section itself and about the paragraph B and C criteria in the proposed listings. Final 12.00C4 now contains two paragraphs. The first paragraph defines ''episodes of decompensation,'' without the proposed phrase, ''causing deterioration.'' We also revised the proposed definition to make clear that episodes of decompensation are accompanied by a loss of adaptive functioning, instead of stating that such episodes ''may include'' loss of adaptive functioning, as we had proposed. A new second sentence in the first paragraph explains that episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment, or a less stressful situation (which can include withdrawal from the stressful situation), or a combination of the two. Such an episode may be shown by significant alteration in medications, documentation of the need for a more structured psychological support system, or other relevant information.

We also added a new second paragraph in final 12.00C4. The first sentence introduces and defines the term, ''repeated episodes of decompensation, each of extended duration.'' In the final rules, we used this term in each of the paragraph B4 and C1 listing criteria instead of repeating the requirement, as we had proposed in the NPRM, that the episodes of decompensation average three times within 1 year or once every 4 months, and each last for at least 2 weeks. We provide guidance in the second sentence of this new paragraph for evaluating episodes of decompensation that occur less frequently than three times in a year or once every 4 months but last longer than 2 weeks, or that are of shorter duration but occur more frequently.

We made all of the changes in final 12.00C4 in response to comments. We describe the comments and give our reasons for making these changes in the public comments section of this preamble under the heading for 12.00C4 and under the heading for listing 12.02, where we discuss all of the general comments about the paragraph B4 and C1 criteria in the listings.

12.00D Documentation

As in the NPRM, we greatly expanded final 12.00D from the prior rules to provide guidance about several aspects of the documentation of claims involving mental disorders. We made many changes in the final rules in response to comments, most of which we describe in the public comments section of this preamble.

In response to the comments, we reorganized and simplified the final section. Proposed 12.00D contained 24 paragraphs, none of which had headings, or number or letter designations. As a result, the proposed section was somewhat cumbersome and some of the comments indicated to us that it needed an internal structure.

Proposed 12.00D addressed a number of different topics that all fall under the heading, ''Documentation,'' but are otherwise separate topics. The first four and one-half paragraphs of the proposed section discussed general issues associated with the development of claims: Requirements to obtain medical evidence to establish the existence of a medically determinable impairment; the value of information from the individual and others who know the individual; the need to establish a longitudinal record because of variations in functioning; the relevance of work; and the purchase of consultative examinations employing psychometric testing. From the middle of the proposed fifth paragraph through the proposed eighteenth paragraph, we provided technical discussions about psychological testing, including two paragraphs devoted to neuropsychological testing. The nineteenth through twenty-fourth paragraphs primarily discussed issues related to the documentation of particular disorders.

Aside from the fact that reference to the numerous unnumbered paragraphs in the section was difficult, our proposal grouped together different topics without any indication that they addressed more-or-less distinct subjects. This unstructured organization confused some commenters about our intent in several areas. Therefore, in response to the comments, we provided headings and number or letter designations for each of the paragraphs wherever we believed that they would help clarify the rules. The final rules are structured as follows.

The opening paragraph of final 12.00D is based on the first paragraph of prior 12.00D and the first paragraph of proposed 12.00D and includes new provisions that we added in response to a comment. The paragraph provides general guidance that the documentation in a claim must include sufficient evidence to establish the existence of a medically determinable mental impairment(s), to assess the degree of functional limitation the impairment(s) imposes, and to project the probable duration of the impairment(s). It also provides a cross-reference to §§ 404.1512 and 416.912, which define the term ''evidence'' and describe the various individuals, institutions, and agencies that can provide evidence. These regulatory sections also explain the efforts we will make to assist individuals in obtaining existing evidence or in developing evidence (such as through a consultative examination) for their claims.

The remainder of the opening paragraph of final 12.00D provides three reminders of longstanding policies in our regulations that we apply to all individuals, not just those with mental impairments. First, the medical evidence must be sufficiently complete and detailed to permit an independent determination. Second, we should consider information from other relevant sources (including nonmedical sources) in determining how an individual's medically determinable impairment(s) affects his or her ability to function. Third, we will consider all relevant evidence in the case record.

Final 12.00D1, ''Sources of evidence,'' is divided into three parts. Final 12.00D1a, ''Medical evidence,'' explains that we must have evidence from an acceptable medical source showing that an individual has a medically

determinable mental impairment. It further provides that we will make every reasonable effort to obtain all relevant and available medical evidence about an individual's mental impairment. It also explains that, whenever possible, and appropriate, medical source evidence should reflect the source's consideration of information from the individual and other concerned persons who are aware of the individual's functioning. In accordance with standard clinical practice, any medical source assessment of an individual's mental functioning should take into account sensory, motor, or communication abnormalities and the individual's cultural and ethnic background. These provisions are based on the third sentence of the first paragraph and part of the last sentence of the third paragraph of proposed 12.00D, but are significantly expanded and revised.

Final 12.00D1b, ''Information from the individual,'' corresponds to the first two sentences of the second paragraph of proposed 12.00D, which we revised in response to comments. It now explains that individuals with mental impairments can often provide accurate descriptions of their limitations, but recognizes that some individuals may not be willing or able to fully describe their limitations. Therefore, we must carefully examine statements from each individual to determine if they are consistent with the other evidence of record and to determine whether we need additional information about the individual's functioning from the individual or from other sources.

Final 12.00D1c, ''Other information,'' corresponds to the third and fourth sentences of the second paragraph and the last sentence of the third paragraph of proposed 12.00D. It explains how we consider information from other health care providers, records from work evaluations and rehabilitation progress notes, and lay sources, such as family members.

Final 12.00D2, ''Need for longitudinal evidence,'' corresponds to most of the third paragraph of proposed 12.00D. We explain that an individual's level of functioning may vary considerably over time, so that functioning at a specific time—regardless of whether it is adequate or poor—may not be an accurate indicator of the overall severity of the individual's impairment(s). This section explains that proper evaluation of the impairment(s) must take into account any variations in the level of functioning. It also explains that it is vital to obtain evidence from relevant sources over a sufficiently long period to establish impairment severity. Apart from minor editorial revisions, the final paragraph is unchanged from the NPRM.

Final 12.00D3, ''Work attempts,'' corresponds to the fourth paragraph of proposed 12.00D. In response to a comment, we added a sentence reminding adjudicators to consider the degree to which an individual requires special supports, such as those provided through supported employment or transitional employment programs, in order to work. Otherwise, the substance of the final paragraph is unchanged from the NPRM.

Final 12.00D4, ''Mental status examination,'' is a new paragraph that we added in response to a comment. It describes the components of mental status examinations and the circumstances under which such examinations are performed.

Final 12.00D5, ''Psychological testing,'' consists of three paragraphs. Final 12.00D5a corresponds to the third sentence of the fifth paragraph of proposed 12.00D. It explains the reference to ''a standardized psychological test'' in these listings and what we mean by the term ''qualified'' specialist. We also divided the proposed sentence into two sentences and clarified our intent.

Final 12.00D5b provides guidance about the general kinds of information one can expect to elicit from psychological tests. It begins with a sentence that is based on the last sentence of the fifth paragraph of proposed 12.00D, which we revised in response to a comment. We now state that psychological tests elicit a range of ''responses,'' rather than ''behaviors.'' The paragraph finishes with the provisions from the first two sentences of the ninth paragraph of proposed 12.00D. These sentences explain that other information can be obtained from psychological testing, such as information from the specialist's observations about the individual's ability to do the test.

Final 12.00D5c is the same as the sixth paragraph of proposed 12.00D except for minor editorial changes. It provides technical information about the salient characteristics of a good test. The section also reminds adjudicators about the need to note and resolve any discrepancies between formal test results and the individual's customary behavior and daily activities.

Final 12.00D6, ''Intelligence tests,'' consists of five paragraphs, designated 12.00D6a through 12.00D6e. These paragraphs incorporate various provisions from the fifth, eighth through eleventh, fifteenth, and sixteenth paragraphs of the proposed rules. These provisions of the proposed rules specifically concerned intelligence testing and properly should have been grouped together. In the course of reorganizing the provisions, we also revised them to simplify and clarify the rules.

We made several substantive changes throughout 12.00D6 in response to comments. We address the substantive changes in the public comments section of this preamble.

In 12.00D6d we made some technical changes. First, we added an introductory sentence which indicates that it is usually preferable to use IQ measures that are wide in scope and test both verbal and performance abilities. Then, we deleted the word ''nonverbal,'' which had been in the eighth paragraph of the proposed rules, and also deleted the reference to ''the Raven Progressive Matrices'' and added a reference to the ''Test of Nonverbal Intelligence, Third Edition (TONI–3).''

In addition, in final 12.00D6e, we made technical changes from the proposed rules. The final paragraph combines provisions from the fifteenth and sixteenth paragraphs of proposed 12.00D. These paragraphs discussed exceptions to formal standardized psychological testing and contained language that we copied from the fifteenth and sixteenth paragraphs of 112.00D in the childhood mental listings. In reviewing the sixteenth paragraph, we noted technical inaccuracies that had to be corrected. In the proposed rules, we referred to the ''Scale of Multi-Cultural Pluralistic Assessment (SOMPA),'' and called it a ''culture-free'' test. A more appropriate term is ''culture-fair.'' The SOMPA, however, is a test for children age 5 to 11 years 11 months old; therefore, reference to it is not appropriate in the adult rules. Moreover, the SOMPA battery of tests includes an age-appropriate Wechsler scale of intelligence. Since the Wechsler scales are English-language tests, they are not culture-fair. As such, their inclusion as part of the SOMPA makes that battery of tests not culture-fair, and therefore inappropriate for inclusion in the sixteenth paragraph of 112.00D of the childhood rules.

Also, the proposed sixteenth paragraph did not convey our intended meaning. The provision that required testing in an individual's principal language would have inadvertently ruled out consideration of the results of testing not done in the individual's principal language that happened to be part of the existing medical evidence. It also would have ruled out the possibility of testing a bilingual

individual in English, even if the individual has sufficient fluency in English as a second language. Further, the paragraph allowed for testing through a translator in some circumstances, even though this would introduce a variable that might compromise the results of the test. This was not our intent.

For all these reasons, we deleted the second through sixth sentences of the proposed sixteenth paragraph. Because the remaining paragraph was so similar to the proposed fifteenth paragraph, we combined the fifteenth and sixteenth paragraphs under one heading in final 12.00D6e. The paragraph addresses exceptions to formal standardized testing, including exceptions to standardized testing in the individual's own language. We still retain reference to the Leiter International Performance Scale-Revised and a discussion of individuals whose culture and background are not principally English-speaking in final 12.00D6d; therefore, there is no need to repeat the reference and discussion in final 12.00D6e.

Also, the fifteenth and sixteenth paragraphs of 112.00D of the childhood listings included some of the same wording that was problematic in the proposed adult rules. For this reason, and to maintain consistency between part A and part B, we replaced the fifteenth and sixteenth paragraphs in 112.00D with the same wording found in final 12.00D6d and 12.00D6e, revised slightly to make reference to children.

In final 12.00D7, ''Personality measures and projective testing techniques,'' we combined and simplified the provisions in the twelfth and fourteenth paragraphs of the proposed rules. The paragraph addresses standardized personality measures (such as the Minnesota Multiphasic Personality Inventory-Revised, or MMPI–II) and projective types of techniques (such as the Rorschach and Thematic Apperception Test, or TAT). For reasons we explain in the public comments section of this preamble, we deleted the proposed discussion devaluing these two types of tests. This deletion includes the discussion of the ''limited applicability'' of personality measures, and the statement that projective tests are not useful for program purposes. We now state that these tests may provide useful data for evaluating several types of mental disorders. In addition, we acknowledge that such test results may be useful for disability evaluation when corroborated by other evidence.

Final 12.00D8, ''Neuropsychological assessments,'' incorporates paragraphs seventeen through twenty of proposed 12.00D. We deleted the last two sentences of the proposed eighteenth paragraph of the NPRM in response to comments. In the last sentence of the first paragraph, which corresponds to the last sentence of the seventeenth paragraph of proposed 12.00D, we changed the word ''professionals'' to ''specialist,'' consistent with the terminology in final 12.00D5. We also deleted the phrase, ''and applying its findings in the disability decisionmaking process,'' because we have other regulations that address the qualifications of our medical and psychological consultants. We also reorganized and simplified the remaining provisions somewhat, but did not make substantive changes.

Final 12.00D9, ''Screening tests,'' corresponds to the thirteenth paragraph of proposed 12.00D. For reasons we explain in the public comments section of this preamble, we deleted the second and third sentences of the proposed paragraph. We also simplified the remaining language without making any substantive changes.

Final 12.00D10, 12.00D11, and 12.00D12 address three specific types of impairments. Final 12.00D10, ''Traumatic brain injury (TBI),'' corresponds to the twenty-second paragraph of proposed 12.00D. We expanded the statement we proposed, which referred only to the ''evaluation'' guidelines in 11.00F, to refer to the ''documentation and evaluation'' guidelines in 11.00F. We also made minor editorial changes, including a different heading for this paragraph. We describe our reason for making this change above, under the heading for 11.00F.

Final 12.00D11, ''Anxiety disorders,'' corresponds to the twenty-third paragraph of proposed 12.00D. The final and proposed paragraphs are nearly identical. We changed ''testimony'' to ''statements'' in the last sentence of the final paragraph.

Final 12.00D12, ''Eating disorders,'' corresponds to the twenty-fourth paragraph of proposed 12.00D. We made a technical clarification in the last sentence of the final paragraph. The sentence in the NPRM indicated that when the primary functional limitation is physical, any mental manifestations ''must'' also be considered in addition to the physical manifestations of the impairment. In the final paragraph, we added a clause to the end of the sentence providing an exception for the situation in which a fully favorable determination or decision is possible based on the physical findings alone. In such a case, we would not need to consider the individual's mental manifestations because we will have already found him or her disabled. Otherwise, there is no substantive change from the NPRM in the final paragraph.

Finally, we deleted four of the proposed paragraphs. We deleted the nineteenth and twentieth paragraphs because they addressed the evaluation of declines in cognition from premorbid functioning, a reference to the paragraph A7 criterion in listing 12.02. We are deferring adding these two paragraphs until we reassess the proposed changes to the A criteria of the listings. We deleted the seventh paragraph in response to a comment that pointed out that the paragraph could have been misinterpreted to preclude consideration of testing that did not demonstrate all of the salient characteristics of a ''good test.'' We deleted the twenty-first paragraph (which was also the ninth paragraph of prior 12.00D) because it could have been misleading in the context of the new rules. The paragraph explained that when the individual's cognitive impairment is such that standard intelligence testing is precluded, medical reports and observations by other individuals should be obtained to describe the individual's functioning. In fact, we may need this kind of evidence regardless of the type of impairment involved or whether intelligence testing is precluded. We did not want to give the impression that this was the only circumstance in which we would gather such evidence, and we have other rules that describe the various sources of evidence.

12.00E Chronic Mental Impairments

This section provides guidance and reminders for the evaluation of chronic mental disorders. Although the substance of the final rules is unchanged from the prior rules, we made minor editorial changes for clarity and comprehensiveness. We did not receive any comments about this section.

12.00F Effects of Structured Settings

Final 12.00F explains some of the factors we consider when an individual has overt symptomatology that is controlled or attenuated by psychosocial factors. We received two favorable comments and one suggestion about this provision, which we address in the public comments section of this preamble. The final rule is unchanged from the NPRM, except for minor editorial changes.

12.00G Effects of Medication

This section provides guidance about how we assess the effects of medication when we determine the functional limitations caused by an individual's mental impairment(s). In the final rules, we changed the terminology to reflect generic names for describing medications used in the treatment of mental disorders. As a result, we substituted the more common term ''drugs'' for ''psychoactive medications'' in the second and third sentences of the first paragraph and the first sentence of the second paragraph. Although the prior rules had used ''neuroleptics'' in the second paragraph, this specific class of drugs is subsumed under the broad term, ''drugs.''

12.00H Effects of Treatment

This section provides a reminder that treatment may have positive effects to the extent that an individual may not be disabled. Therefore, the paragraph includes a reminder that treatment ''may or may not'' enable an individual to work.

The final paragraph is substantively unchanged from the prior rules. In the NPRM, we proposed simplifying the paragraph and revising the parenthetical reference to include 12.02 and 12.04, which now also contain paragraph C criteria. In response to a comment about the fourth paragraph of proposed 12.00D, we also clarified the second sentence of the section to indicate that treatment may or may not assist in the achievement of an adequate level of adaptation required for ''sustained SGA'' instead of in the ''workplace.'' This is not a substantive change, only a clarification; we explain it more fully in the public comments section. We pluralized the word ''effect'' in the heading in the final rules for accuracy and consistency with the headings of the previous sections.

12.00I Technique for Reviewing Evidence in Mental Disorders Claims To Determine the Level of Impairment Severity

This brief section provides a cross-reference to §§ 404.1520a and 416.920a, which describe the technique that must be followed in claims involving mental impairments. Except for minor editorial simplification, the section is the same as in the NPRM, with minor editorial changes. We did not receive any comments about this section.

12.01 Category of Impairments, Mental

12.02 Organic Mental Disorders

In final listing 12.02, there are no changes in the paragraph A criteria from the prior rules, because we deferred making any of the changes we had proposed in the NPRM.

In the paragraph B criteria of listing 12.02, and all other listings that employ paragraph B criteria, we changed the paragraph B3 criterion (marked difficulties in maintaining concentration, persistence, or pace) to parallel the paragraph B1 and B2 criteria. In response to a comment that pointed to possible future misunderstandings, we simplified the criterion, for reasons we explain in the comments and responses section of this preamble. For consistency, we made similar changes in a number of places in 112.00.

We reworded final paragraph B4 to focus on decompensation. (The use of the word ''decomposition'' throughout the NPRM was a typographical error, although we did receive several comments about it.) As we explain under the heading for 12.00C, we defined the paragraph B4 criterion in the preface at 12.00C4. The paragraph B4 criterion now states, ''Repeated episodes of decompensation, each of extended duration.''

We added a new paragraph C to listing 12.02 to evaluate individuals with chronic organic mental disorders with symptoms or signs that are currently attenuated by medication or psychosocial support. These new provisions are similar to paragraph C of listing 12.03. The introductory paragraph of listing 12.02C reflects our longstanding policy as to what constitutes a ''severe'' impairment under §§ 404.1521, 416.921, 416.924, and Social Security Ruling 85–28. It also explains that a ''chronic'' mental disorder is one that has lasted for at least 2 years.

The opening sentence of paragraph C is substantively the same as in the NPRM, except for two minor editorial revisions. We revised paragraph C1, which in the proposed rules was identical to the paragraph B4 criterion, to reflect the changes in final paragraph B4. In response to a comment, we added a new paragraph C2 to address individuals who have a residual disease process and who do not suffer repeated episodes of decompensation, but who are so marginally adjusted that even a minimal increase in mental demands or a change in environment would be predicted to cause decompensation. As we explain in the public comments section, this is a longstanding policy interpretation that we intended paragraph C to cover.

Final paragraph C3, which was paragraph C2 in the NPRM, is unchanged, except for minor editorial changes. We based this revision on the prior listing 12.03C2 criterion describing a documented inability to function outside of a highly supportive living arrangement. We did not change the requirement from the proposed rules for a documented current history of an inability to function 1 or more years, in keeping with the statutory definition of disability, which requires that a disability must last for at least 12 months. The prior rules required a 2 year history.

All of the changes in final listing 12.02 were made in response to public comments. We provide detailed information about these changes, and our reasons for making them, in the public comments section of the preamble.

12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

In the final rules, we revised the opening statement of final paragraph C to better reflect the nature of the disorders covered under listing 12.03. Final paragraphs C1, C2, and C3 are similar to those found in listing 12.02.

We received only one public comment about the proposed listing. Because it was a favorable comment and did not ask us to revise the proposed listing, we do not summarize it below.

12.04 Affective Disorders

Final listing 12.04 incorporates a new paragraph C, similar to the paragraph C criteria in listings 12.02 and 12.03. We revised the proposed paragraph B and C criteria consistent with the revisions to the paragraph B and C criteria we describe for listing 12.02.

We received only two comments about the proposed listing. One was complimentary and one offered a suggested addition to the paragraph A criteria of the listing.

12.05 Mental Retardation

In the final rules, we revised the heading of this listing to limit its scope to mental retardation.

In response to one comment, we expanded the phrase setting out the age limit for the ''developmental period.'' The final rules clarify that we do not necessarily require evidence from the developmental period to establish that the impairment began before the end of the developmental period. The final rules permit us to use judgment, based on current evidence, to infer when the impairment began. This is not a change in interpretation from the prior rules. We discuss this change in greater detail in the public comments section of this preamble.

In final listing 12.05C, as in the NPRM, we used the word ''an'' before the word ''additional'' to clarify that the additional impairment must be ''severe'' in order to establish ''an additional and significant work-related limitation of function.''

In the NPRM, we had removed the second clause of prior listing 12.05D, which referred to autism, and established a new listing 12.05E to evaluate autistic disorder and other pervasive developmental disorders. In response to a public comment and for consistency with the childhood mental disorders listings, we deleted proposed listing 12.05E from the final rules and established a new listing 12.10, ''Autistic disorder and other pervasive developmental disorders.'' Final listings 12.05 and 12.10 parallel the childhood mental disorders listings 112.05 and 112.10. We made this change to clarify the intent of proposed listing 12.05; the change does not disadvantage anyone. Those individuals diagnosed with both mental retardation and autistic disorder (or other pervasive developmental disorders) can be evaluated under either listing.

We also revised the paragraph B3 and B4 criteria in listing 12.05D to be consistent with the changes in listing 12.02. We summarize all of the comments, explain our responses, and describe the revised language in greater detail in the public comments section of this preamble.

12.06 Anxiety Related Disorders

In final listing 12.06, we made minor editorial changes and revisions to the paragraph B criteria, which we describe under the heading for listing 12.02.

12.07 Somatoform Disorders

In final listing 12.07, we deferred adding eating disorders and tic disorders as we had proposed in the NPRM.

As in the NPRM, the final listing requires that an impairment satisfy only two of the paragraph B criteria instead of three, as in the prior rules. However, we revised the paragraph B criteria in this listing, as we explain under the heading for listing 12.02.

12.08 Personality Disorders

In the final listing, we reduced to two the number of paragraph B criteria needed to meet the listing. There are no substantive differences between the final paragraph B criteria and the NPRM, other than the changes we explain under the heading for listing 12.02.

We did not receive any comments about listing 12.08 requiring a response. We received only favorable comments about our proposal to reduce the required number of paragraph B criteria from three to two.

12.10 Autistic Disorder and Other Pervasive Developmental Disorders

We established this new listing in response to a public comment about proposed listing 12.05. Final listing 12.10 parallels listing 112.10 under the childhood mental disorders listings.

Final listing 12.10 is met when the requirements in paragraphs A and B of the listing are satisfied. The paragraph B criteria, which we discuss under the heading for listing 12.02, are the same as those found in the other adult mental disorders listings.

112.00 Childhood Mental Disorders Listings

We made a number of changes throughout 112.00 to make the childhood mental disorders listings consistent with the final adult listings. In many cases, the revisions are not substantive. In others, our reasons for the changes are the same as our reasons for changing the adult rules, and we explain them above and in the public comments section of this preamble.

As we explain under the summary of final 12.00D6, we also revised the fifteenth and sixteenth paragraphs of 112.00D so that they are the same as final 12.00D6d and 12.00D6e, appropriately revised to refer to children. In addition, we revised the seventeenth paragraph of 112.00D; it is the same as 12.00D8.

Other Changes

In the NPRM, we had proposed to delete the last sentence in paragraph B of 5.00 (Digestive system) in connection with a change we had proposed to listing 12.07, ''Somatoform disorders.'' We did not receive any comments about this proposal, and, although we did not make the proposed change to listing 12.07, we deleted the sentence in these final rules.

In response to a comment about the definition of psychiatric signs in the third sentence of proposed 12.00B, we broadened and updated the sentence. Because the sentence in 12.00B was based on §§ 404.1528(b) and 416.928(b), we also revised those sections of the regulations and the corresponding sentence in 112.00B. The revisions are not substantive. We describe them in detail under the public comments about proposed 12.00B.

We revised the seventh paragraph of 112.00A to reflect the addition of paragraph C criteria to listings 12.02 and 12.04. We did not otherwise change the substance of the paragraph, however, because we still believe it is not necessary to include paragraph C criteria in the childhood listings.

We made a technical revision to the second sentence of the eighth paragraph of 112.00A to make it consistent with the revisions we made to the fourth paragraph of 12.00A.

In addition, we inserted a new third paragraph in 112.00C which explains that, even though the functional criteria for assessing limitations in children under age 3 are expressed in terms of chronological age, we will follow the rules in § 416.924a(b) when we evaluate the claims of infants and toddlers who are born prematurely. This technical change makes the discussion of how we assess impairment severity in claims involving mental disorders consistent with our other childhood disability rules.

We revised the second, fourth, and fifth sentences of the ninth paragraph of 112.00D so they are consistent with the changes we made in final 12.00D6c. We discuss all of these changes in the public comments section under 12.00D.

Finally, in addition to changes made in response to the comments and the technical changes described above, we made a number of nonsubstantive editorial changes throughout the final adult rules. For example, we changed some of the provisions from the passive voice to the active voice and revised punctuation and capitalization for consistency with our other rules. These revisions are only for clarity and consistency and do not change the meaning of the language we proposed.

Public Comments

After we published the NPRM in the **Federal Register** (56 FR 33130) on July 18, 1991, we mailed copies to national medical organizations and professionals whose responsibilities and interest require them to have some expertise in the evaluation of mental impairments. We also sent copies to Federal and State agencies (including the State agencies that make disability determinations for us) interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from mental health advocacy groups, as well as from legal service organizations.

We received over 120 letters containing comments pertaining to the changes we proposed. The majority of the comments were from psychologists, organizations and groups that represent people interested in specific mental impairments, and sources with specialized backgrounds in psychiatry. Many of the comments concerned the

specific diagnostic and severity rating criteria for the proposed listings, as well as our proposals to revise the discussion of psychological testing in the preface to these listings.

We carefully considered all of the comments and adopted many of the recommendations relevant to the proposed revisions finalized by these rules. We provide our reasons for adopting or not adopting the recommendations in the summary of the comments and our responses below. A few of the comments, however, pertained to Social Security matters that were not within the scope of the proposed regulations. We referred these comments to the appropriate components of the Social Security Administration and do not address them in this preamble.

Finally, a number of the comments were quite long and detailed. Of necessity, we have had to condense, summarize, or paraphrase them. Nevertheless, we have tried to present all views adequately and to respond to all of the relevant issues raised by the commenters.

Sections 404.1520a and 416.920a Evaluation of Mental Impairments

Comment: Many commenters expressed concern about the definitions for the terms for rating the degree of functional limitation (e.g., ''moderate,'' ''marked'') in proposed §§ 404.1520a(b)(3) and (b)(7) and 416.920a(b)(3) and (b)(7), which applied to adults and to children from age 3 to attainment of age 18. One commenter asserted that in attempting to clarify the rating scale points, we had focused on a specific range of mental illnesses and lost sight of the need to evaluate mental impairments on a longitudinal basis. As a result, the commenter believed that the proposed definitions only contemplated illnesses that remained constant and failed to consider episodic illnesses.

Several commenters, referring specifically to the proposed definitions of ''marked'' limitations, were concerned that the proposed rules did not recognize an important principle set out in the opening paragraph of 12.00C. That paragraph explains that a ''marked'' limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with the ability to function independently, appropriately, effectively, and on a sustained basis.

Response: We adopted the comments insofar as they relate to the revisions included in these final rules. As noted in the explanation of the final rules above, we substantially revised proposed §§ 404.1520a and 416.920a.

One substantive change we made in response to the comments was to delete the proposed scale point definitions and examples from the final rules. Instead, we included new language in final §§ 404.1520a(c)(1) and 416.920a(c)(1), expanded final §§ 404.1520a(c)(2) and 416.920a(c)(2), and modified the discussion in §§ 404.1520a(c)(4) and 416.920a(c)(4) regarding the last two scale points, ''marked'' and ''extreme.'' We discuss this latter change, and our reasons for it, later in this response.

We recognize that we consider many factors when we assess an individual's functioning. In final §§ 404.1520a(c)(1) and 416.920a(c)(1), we expanded the general guidance we had proposed in §§ 404.1520a(b)(1) and 416.920a(b)(1). The final rules clarify that we will consider the overall functional effects of an individual's impairment(s) longitudinally; i.e., over time. We also explain in the opening sentence of final §§ 404.1520a(c)(1) and 416.920a(c)(1) that the assessment of functional limitations is a complex and highly individualized process that requires us to consider multiple issues and all relevant evidence. In the second sentence, we provide examples of some of the factors that may affect an individual's functioning.

We reinforce these principles in final §§ 404.1520a(c)(2) and 416.920a(c)(2). Our intent in these paragraphs is to explain that the basic consideration in assessing functional limitations is the extent to which an individual's impairment or combination of impairments interferes with his or her ability to function independently, appropriately, effectively, and on a sustained basis. To reinforce the principle that this assessment is not tied to a particular number of limited activities, and to address the comments we received, we explain that among the factors we will consider is the quality and level of an individual's overall functional performance. We also include an explicit reference to limitations resulting from episodic illness. Finally, to recognize that there are other factors we will consider, we provide a cross-reference to several paragraphs in the adult mental disorders listings which describe these factors in more detail.

Given all the factors that we consider in rating the degree of functional limitations resulting from an impairment(s), we concluded that the rating scale definitions we had proposed were over simplified. As a result, we deleted them from these final rules. However, we retained and modified the last sentence of proposed §§ 404.1520a(b)(2) and (b)(4)(iii) and 416.920a(b)(2) and (b)(4)(iii). This sentence had stated that the last two points on each scale represent a degree of limitation that is incompatible with the ability to perform the work-related function or (for a child) to perform the function in an age-appropriate manner. The last sentence of final §§ 404.1520a(c)(4) and 416.920a(c)(4) now states that the ''extreme'' scale point represents a degree of limitation that is incompatible with the ability to do any gainful activity.

The final wording changes two things about the meaning of the sentence. First, it shifts the focus of the sentence from inability to perform particular work-related functions to inability to perform any gainful activity. The final rules reflect the listing-level severity standard in §§ 404.1525(a) and 416.925(a). This is a more severe standard of disability than is necessary to establish disability at the last steps of the sequential evaluation processes for adults. As a result, the final rules clarify that an ''extreme'' limitation in any one area of functioning means that the individual has an impairment(s) of listing-level severity.

Second, the final rules remove the implication that the next-to-last scale point, a ''marked'' limitation, can be equated with an ''extreme'' limitation. Since we shifted the focus of the sentence to listing-level severity, and because an individual must have ''marked'' limitations in two areas of functioning to be found to have a listing-level impairment, the revision clarifies the distinction between the ''marked'' and ''extreme'' degrees of limitation. At least one commenter thought this distinction was unclear in the proposed rules.

Comment: One commenter pointed out that in proposed §§ 404.1520a(b)(2) and 416.920a(b)(2), we stated that the four functional areas we use to evaluate the functional limitations of adults are ''essential'' to an adult's ability to work. The commenter asserted that, while each of these areas may have potential applicability to fitness for work, no empirical data exist to substantiate their utility in predicting performance on the job.

Response: We disagree, but accommodated the comment. The American Psychiatric Association, under contract to us, conducted an independent scientific assessment of the adult mental disorders listings which were revised in August 1985. The findings from the assessment, as reported in 1987, supported continued use of these four criteria when

predicting an individual's inability to do any gainful activity.

Nevertheless, we believe that the language proposed in §§ 404.1520a(b)(2) and 416.920a(b)(2) relating to the assessment of adult claims was more of an observation than a substantive rule and did not significantly add to the rules. Therefore, we deleted it from the final rules. We also clarified the third and fourth paragraphs of final 12.00A by replacing the word ''work'' with the phrase ''do any gainful activity.'' In addition, we deleted the word ''work'' from ''gainful work activity'' in the first sentence of the sixth paragraph. This will make it clear that the criteria in the listings establish listing-level severity, not just the inability to do any substantial gainful activity. (The references to ''work'' in the first paragraph of final 12.00A and elsewhere in the section are still correct in their particular contexts.)

Comment: One commenter recommended that we should continue to consider lay statements when assessing an individual's functional limitations under the revised rules in §§ 404.1520a and 416.920a.

Response: We did not intend to give the impression that we would stop considering such evidence. Current §§ 404.1513(e) and 416.913(e) acknowledge that information from lay sources may help us to understand how an individual's impairment(s) affects his or her ability to function. We believe that the extensive revisions to final §§ 404.1520a and 416.920a also make clear that we will consider all relevant evidence. These final rules do not change our policy regarding the use of lay statements in assessing the severity of mental impairments.

Comment: One commenter thought that the first sentence in proposed §§ 404.1520a(c)(3) and 416.920a(c)(3), regarding determinations of equivalence, was inconsistent with our policies on determining equivalence. The commenter said that the sentence indicated that the only consideration in determining equivalence was to be given to the listings themselves, and that this was ''a discredited notion.''

Response: The comment was unclear to us, but it indicated that some of the proposed rules had been misunderstood. For determinations of equivalence, we require our adjudicators to identify particular listed impairments to which an individual's impairment(s) is equivalent in severity. This does not mean that we require the individual to have an impairment cited in the listings, only that some justification must exist for a finding of equivalence. Thus, a comparison to a particular listing must demonstrate that an impairment(s) is equivalent in severity. Nevertheless, since this comment demonstrated that the language could be unclear, we replaced the proposed sentence with two introductory sentences, as we describe in the explanation of final §§ 404.1520a(d)(2) and 416.920a(d)(2).

We also replaced the potentially misleading phrase, ''equals the listings,'' in proposed §§ 404.1520a(c)(4) and 416.920a(c)(4) with the more accurate ''is equivalent in severity to any listing'' in final §§ 404.1520a(d)(3) and 416.920a(d)(3). In addition, we deleted the concluding phrase ''when appropriate to the category of claim being assessed'' from the sentence. All categories of cases involving a severe impairment(s) that neither meets nor is equivalent in severity to any listed impairment require an RFC assessment. Finally, we revised the first sentence of the sixth paragraph and the last sentence of the seventh paragraph of final 12.00A to use similar language to final §§ 404.1520a(d)(2) and 416.920a(d)(2).

Comment: One commenter asked whether the standard document, the ''Psychiatric Review Technique'' form (PRTF), will be revised to reflect changes in the listings.

Response: We have revised the original PRTF wherever necessary to reflect the revisions we made in the final rules for adults.

Comment: We received a number of comments about the change in proposed §§ 404.1520a(d)(1) and 416.920a(d)(1), which allowed the medical consultant or psychological consultant within the State agency to request disability examiners to assist in the completion of the PRTF. Two of the comments supported the change, noting that it would give State agencies additional flexibility in dealing with workload demands. However, most of the comments opposed the change.

Those who opposed the change gave at least one of the following reasons: (1) The proposal violated the Commissioner's (formerly the Secretary's) duty under section 221(h) of the Act to make every reasonable effort to ensure that the claims of individuals with mental impairments are evaluated by qualified psychiatrists or psychologists; (2) the proposal represented an arbitrary change in past agency policy; and (3) the proposal would lead to less accurate assessments at the State agency level, which would be detrimental to individuals with mental impairments. Most commenters opposed to the proposal recommended that we delete the proposed rule from the final rules.

Response: We did not adopt the comments that asked us to delete the proposed rule. In response to the comments, however, we clarified final §§ 404.1520a(e)(1) and 416.920a(e)(1).

The final rules now state more clearly that the medical or psychological consultant still has the overall responsibility for assessing the medical severity of the individual's mental impairment(s), even though a disability examiner may assist in preparing the PRTF. The medical or psychological consultant must review and sign the PRTF to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. The revision makes it clear that the change is consistent with sections 221(h) and 1614(a)(3)(H)(i) of the Act. These sections of the Act provide that we must make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable RFC assessment in any initial determination in which there is evidence that an individual has a mental impairment, and in which we make a determination that the individual is not disabled. We assess medical severity as part of the medical portion of the case review. The initial preparation of all or part of a PRTF by a disability examiner assisting the physician or psychologist does not constitute part of the medical portion of the case review.

Allowing disability examiners to assist medical consultants or psychological consultants in preparing the PRTF does not change or dilute our statutory responsibility to make every reasonable effort to use medical or psychological consultants. The rules merely give the State agencies the option to utilize the training of their disability examiners so that they can use the expertise of their medical and psychological consultants as efficiently as possible. Disability examiners must be qualified to interpret and evaluate medical reports and other evidence relating to an individual's mental impairment(s). (See the paragraph following §§ 404.1615(c)(3) and 416.1015(c)(3).)

Moreover, the purpose of the statute was to ensure that in cases where there is evidence of a mental impairment, we would make every reasonable effort to have a qualified psychiatrist or psychologist complete the medical portion of the case review and any applicable RFC assessment before we make an initial determination that the

claimant is not disabled. Before Congress enacted sections 221(h) and 1614(a)(3)(H)(i) of the Act, there were no specific requirements in the statute or our regulations concerning the qualifications of medical consultants reviewing claims involving mental impairments. Rather, our regulations at that time simply stated that disability determinations were to be made by a State agency disability team that consisted of a medical consultant (a physician) and a disability examiner. Although the amendments require us to make every reasonable effort to have a qualified psychiatrist or psychologist complete the medical portion of the case review, they do not prohibit a disability examiner from assisting the medical or psychological consultant in the process.

These final rules authorize disability examiners to provide the same assistance in preparing the PRTF that they now provide to consultants in preparing RFC assessments. Disability examiners had been assisting State agency consultants in preparing individualized functional assessment forms in title XVI childhood cases since implementation of the SSI childhood disability rules on February 11, 1991 (56 FR 5534). Nothing in our experience indicates that this assistance had disadvantaged any children in the 6 years between publication of those rules and implementation of the new SSI childhood disability rules on February 11, 1997 (62 FR 6408). Disability examiners also have assisted medical and psychological consultants in preparing the childhood disability evaluation form since implementation of the new SSI childhood disability rules (§ 416.924(g)). Similarly, disability examiners have assisted medical and psychological consultants in preparing RFC forms since August 1, 1991, when we implemented final rules concerning ''Standards for Consultative Examinations and Existing Medical Evidence'' (56 FR 36932). In both processes, disability examiners have demonstrated their ability to provide valuable assistance, and we believe their expertise will be of similar benefit to the PRTF process. Based on our experience, and our confidence in the qualifications of the State agency disability examiners, we do not believe that individuals will be disadvantaged by allowing State agencies the option of having disability examiners assume similar responsibilities in preparing the PRTF, since the medical or psychological consultant retains overall responsibility for assessing the medical severity of an individual's mental impairment.

Comment: One commenter stated that proposed §§ 404.1520a(d)(1) and 416.920a(d)(1) were internally inconsistent because each paragraph began with a sentence requiring the medical or psychological consultant to perform the evaluation and complete the standard document, yet in a later sentence allowed the disability examiner to complete the entire document and only required the consultant to sign it. In addition, this commenter opined that since §§ 404.1512(b)(6) and 416.912(b)(6) state that the findings of State agency medical and psychological consultants are considered ''medical evidence'' at the administrative law judge and Appeals Council levels, disability examiner involvement in completing the PRTF either should be precluded or identified in some fashion, since those recorded findings would not constitute ''medical evidence.''

Response: We clarified final §§ 404.1520a(e)(1) and 416.920a(e)(1) in response to the first part of the comment. We agree that the proposed rules used the phrase ''complete the standard document'' ambiguously to mean ''fill out'' the form in some instances and ''finalize'' (as by signature) in others. The final rules remove this ambiguity.

We do not agree with the commenter's second argument. When the medical or psychological consultant signs the PRTF, his or her signature attests that it is complete and that its entire content represents his or her medical findings. Any entries made by a disability examiner on the PRTF become the findings of the medical or psychological consultant when he or she attests to its completeness and its content by signing the form. Accordingly, the administrative law judge or the Appeals Council (when the Appeals Council issues a decision) will still evaluate these findings using our existing rules (§§ 404.1527(f)(2) and (f)(3), 416.927(f)(2) and (f)(3), and SSR 96–6p).

Comment: A few commenters questioned our proposal in §§ 404.1520a(d) and 416.920a(d) of the NPRM (final §§ 404.1520a(e) and 416.920a(e)) to eliminate the use of the PRTF at the administrative law judge hearing and Appeals Council levels of the administrative review process. One commenter noted that the proposed sections appeared to direct administrative law judges to incorporate in their written decisions the same information used on the PRTF. This commenter believed that the PRTF ought to satisfy the documentation requirements. The commenter suggested that we revise the section to allow administrative law judges the option of using the PRTF, either in the decision or as an attachment to it. Another commenter indicated that some administrative law judges may find the PRTF a useful checklist and recommended that they be given the discretion to use the form and append it to their decisions. Since only decisions that are likely to undergo further administrative or judicial review are at issue, one commenter suggested requiring the PRTF at least for those decisions.

A few commenters believed that the PRTF has helped to ensure the quality and completeness of hearing decisions, that it is a safeguard against incomplete review of the evidence, and that it assures claimants and advocates that the decision conforms strictly to our rules for evaluating mental impairments.

Response: We did not adopt the comments. The primary purpose of the final rules is to describe the technique, as distinct from the form, and to require the use of the technique in all determinations and decisions at all levels of the administrative review process, including the hearings and appeals levels. The technique is a systematic process adjudicators apply when evaluating an individual's mental impairment(s). The PRTF (i.e., the form itself) should not be confused with application of the technique; the form simply documents application of the technique with a checklist of our conclusions.

When we first promulgated these rules in 1985, we believed that they were so novel and complex that it would be useful to require all adjudicators at all levels of the administrative review process to complete the PRTF. At the initial and reconsideration levels, the PRTF has proven to be a simple and convenient method of documenting the conclusions reached by our medical and psychological consultants when applying the technique.

Even though we apply the same technique at the administrative law judge hearing and Appeals Council levels as we do at the initial and reconsideration levels, administrative law judge and Appeals Council decisions are quite different in form from determinations prepared by a State agency. Administrative law judge and Appeals Council decisions include a more detailed explanation of the findings and conclusions reached, supported by a narrative rationale. The decisions under these final rules must include, among other things, the pertinent findings and conclusions required in the application of the technique. Consequently, requiring that a PRTF be appended to an

administrative law judge or Appeals Council decision would only repeat information already required in the decision under these final rules, and renders the PRTF redundant. For this reason, these final rules do not require administrative law judges or the Appeals Council to complete the form or to attach the form to their decisions, just as we do not require them to complete or attach RFC assessment forms to their decisions.

We recognize that administrative law judges and members of the Appeals Council may find the PRTF useful as a checklist and for organizing information in the record. These final rules do not prohibit the use of the form at the hearings and appeals levels to assist the decisionmaker in applying the technique and issuing a decision.

Comment: A few commenters objected to our proposal to delete the special administrative law judge remand provision of prior §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii). Most of these commenters thought that we should retain a provision giving administrative law judges the option to remand cases to the State agencies when new evidence is received at the hearing level that is not merely cumulative of evidence already in the case file, or when the issue of a mental impairment first arises at the hearing level.

Two of these commenters, in identical language, said that the omission of the prior remand provision would make it ''less likely that an administrative law judge would consider new evidence at all.'' The same two commenters thought that the deletion of the prior provision left it unclear whether administrative law judges would be required to evaluate the new evidence without the assistance of the State agency. Another commenter said that the deletion of the provision would result in the issuance of more decisions without fully developed evidence and cause more remands by the Appeals Council and the Federal courts.

One commenter suggested that we strengthen the prior provision instead of deleting it. The commenter provided language for the rules that would require administrative law judges to remand cases in most instances in which new evidence at the hearing level raised the issue of a mental impairment for the first time. Conversely, one commenter thought that proposed §§ 404.1520a(d)(3) and 416.920a(d)(3), which provided for remand to the State agency for completion of the standard document only when an administrative law judge was unable to obtain the services of a medical expert, was too broad. The commenter believed that returning a case to the State agency for completion of the standard document is very time-consuming and could result in nothing more than a second reconsideration. The commenter suggested that we revise our regulations to prevent this.

Two commenters thought the reference to §§ 404.948(c) and 416.1448(c) in proposed paragraph (d)(3) was not a substitute for the deleted provision. One of these commenters challenged the statement in the preamble of the proposed rules (56 FR at 33131) which said that the former administrative law judge remand provision could be deleted because it covers ''what is already covered in §§ 404.941, 404.948, 416.1441, and 416.1448.'' This commenter stated that §§ 404.948 and 416.1448 discuss issuing decisions that are fully favorable to the claimant without an oral hearing and have no relevance to the issue of evidence of a mental impairment first being submitted at the hearing level. The commenter also noted that §§ 404.941 and 416.1441, which discuss prehearing case reviews, are pertinent only when additional evidence is submitted before a scheduled hearing, so sufficient time remains to conduct the review and decide how to address the issues involved.

Response: We understand the commenter's concerns. However, in light of our experience, we do not believe that the prior rules allowed more flexibility and efficiency in resolving claims. Further, the former provisions went beyond their intended scope; i.e., how an administrative law judge can get assistance in applying the technique when the services of a medical expert are needed but unavailable. Although we did not adopt the comments, we clarified final §§ 404.1520a(e)(3) and 416.920a(e)(3).

We agree with the commenter who observed that the provisions in §§ 404.941, 404.948, 416.1441, and 416.1448 are somewhat different from those in §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii) of the prior rules. All discuss the administrative law judge's return of a case to the State agency for further consideration. The return of a case to the State agency for a prehearing case review, which is described in §§ 404.941 and 416.1441, does not delay the scheduling of a hearing. Under this provision, we may return the case to the State agency before the hearing is held, when there is reason to believe that a revised determination wholly or partially favorable to the individual may result. The State agency can then decide whether or not to revise its prior determination. The prehearing case review will not delay the scheduled hearing unless the individual agrees. Similarly, the administrative law judge remand procedure described in §§ 404.948(c) and 416.1448(c) is also designed for speedy claim resolution. It allows an administrative law judge to return a case to the State agency for a revised determination without an oral hearing when there is reason to believe the revised determination would be fully favorable to the individual. In such a case, the individual is notified of the remand and afforded the opportunity to object to it.

In contrast, under the special remand provision in §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii) of the prior rules, in certain instances an administrative law judge could remand a case involving a mental impairment to the State agency for completion of the standard document and a revised determination. The revised determination the State agency could issue upon remand could be unfavorable to the individual and the individual would be required to request another hearing if he or she wished to pursue his or her claim. Ironically, when we proposed the special remand provision in former §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii) in 1985, most commenters opposed it, primarily because they were concerned that it would cause undue delay in our decisionmaking (50 FR at 35047).

In fact, we did not intend for the scope of the prior rules to go beyond the established rules in §§ 404.941, 404.948, 416.1441, and 416.1448, although such an interpretation of the prior rules was possible. Our response to comments to the final rules published in 1985 shows that we intended the prior sections to be applied within the context of our rules on prehearing case reviews and decisions without oral hearings, and that it not delay the decisionmaking process. We responded: ''We believe the remand procedure is consistent with current practice at the hearings level'' and ''[b]ased upon our past experience with the need to remand cases, undue delay should not occur in the disability decision-making process.'' (50 FR at 35047.) Thus, we did not intend to expand the remand procedures in 1985. All we have done in final §§ 404.1520a(e)(3) and 416.920a(e)(3), is to make clear our original intent to provide the least time-consuming means of issuing a favorable decision.

We strongly disagree with the comments that suggested the deletion of the former administrative law judge remand provision from these final rules will result in mental impairment issues first raised at the hearing level being

ignored, inadequately developed, or not fully analyzed by administrative law judges. Nor do we agree that this provision will result in more remands at the Appeals Council and Federal court levels. We believe that our existing rules make it clear that all adjudicators, including administrative law judges, are required to consider all relevant evidence and to develop the record fully.

While it is more efficient for an individual to submit evidence relating to a new issue at the time he or she files a request for hearing, or at least prior to a scheduled hearing, we recognize that this does not always occur. Sections 404.936, 404.944, 416.1436, and 416.1444 provide that an administrative law judge may adjourn, postpone, or reopen the hearing at any time before notice of the decision is released in order to receive or obtain new and material evidence. Presented with insufficient evidence to determine the nature and severity of an individual's mental impairment(s), an administrative law judge must follow our existing rules and seek additional evidence from appropriate sources, regardless of whether we were aware of the mental impairment(s) at the time the initial and reconsideration determinations were issued.

Finally, we disagree with the comment indicating that returning the case to the State agency for completion of a PRTF will result in nothing more than a second reconsidered determination and unnecessary delays. We believe the procedures in these rules are no more time-consuming than the former rules, and in some cases may actually save time. Nevertheless, we have clarified final §§ 404.1520a(e)(3) and 416.920a(e)(3) by deleting the reference to the remand provisions in §§ 404.948(c) and 416.1448(c), and avoiding the use of the word ''remand'' since it may imply that the administrative law judge is requesting a revised determination in every case. The final rules indicate that the State agency will issue a revised determination if a decision favorable to the claimant is warranted based on a review of the case file, so as not to delay the payment of benefits. Otherwise, the State agency will return the case, with a completed PRTF, to the administrative law judge, who will proceed with a hearing and issue a decision.

11.00F Traumatic Brain Injury (TBI)

Comment: Several commenters addressed the proposed rules in 11.00F that required deferral of determinations of disability for up to 6 months in cases of TBI unless a favorable determination could be made sooner. Some were pleased with the proposal. One commenter recommended that we revise the proposed rules to ensure that all TBI cases are not placed in the deferred adjudication categories. Another asked if we would add a provision to deny TBI cases at 3 months or earlier if there is no allegation or medical evidence of an impairment that is more than ''not severe.'' Four commenters suggested that we find individuals whose cases we defer to be presumptively eligible for disability payments, thus giving them access to health care under Medicaid and other services for which they might be eligible.

Response: We did not adopt the comments that asked us to change the proposed rules or provide presumptive disability payments to people with TBI. We intentionally required evidence at least 6 months post-injury before we can deny a TBI claim, even when the individual's allegation or the immediate posttraumatic medical evidence suggests the impairment is ''not severe.'' We decided to allow for the deferral of adjudication of such cases because of the variability and uncertainty of recovery from TBI. We believe the initial 3-month period for deferral (when the individual does not have a profound neurological impairment permitting an earlier finding of disability) and, if necessary, an additional 3-month period, will allow sufficient time for the impairment(s) to stabilize so we can make an accurate projection regarding its severity and duration.

The rule in 11.00F, however, does not prevent us from finding disability sooner on the basis of some other impairment. For example, if an individual has a serious accident with multiple injuries including TBI, the nature and expected course of the additional impairment(s) may support a finding of disability within 3 months post-injury, regardless of any impairment(s) resulting from the brain injury.

Finally, we did not adopt the suggestion to make individuals with TBI presumptively eligible for disability payments while adjudication of their cases is being deferred. Presumptive disability payments are authorized only under title XVI, the SSI program, and would not apply to individuals who file claims only under title II. The rules for presumptive disability in the SSI program are set out in §§ 416.931 through 416.934.

We are not amending these rules to reflect this comment. As we explain in § 416.933, we may make a finding of presumptive disability when the evidence reflects a ''high degree of probability'' that an individual is disabled. The reason we will defer some determinations in TBI cases, however, is that it is not clear whether the individuals are disabled because of the variable and uncertain nature of their impairments. Thus, the evidence does not reflect the requisite degree of probability of disability for presumptive eligibility under our rules. The commenter's suggestion that providing Medicaid and other medical resources to individuals with TBI may be more cost-effective in the long run may be sound, but we have decided that in this instance claimants will not have presented evidence demonstrating a high degree of probability that they are disabled.

Comment: One national organization submitted technical medical comments about TBI and our proposed rules that it had solicited from several professionals. One of the comments included a statement that our disability evaluation criteria poorly served individuals with TBI and a recommendation that we restructure the criteria so that TBI ''patients do not fall through the cracks.''

Response: Many of the comments submitted by the organization related to the current neurological listings, rather than the proposed revisions to the mental listings. Accordingly, those comments are outside the scope of this rulemaking proceeding. We are in the process of reviewing the neurological listings criteria and will consider these comments as part of that process.

Some of the comments addressed the prior mental disorders listings, and we address most of those comments below. A few were comments about criteria in the prior mental listings that we had already proposed to change in the NPRM, some in ways very similar to those suggested in the comments. We did not summarize those comments below because the proposed rules had already addressed their concerns.

We share the commenter's concern about individuals with TBI. As a result, we proposed the new 11.00F in the preface to the neurological listings, which includes rules that are unusual in our program because they provide for the deferral of adjudication of such claims, even when it appears that the individual may not have a significant impairment. Furthermore, we added a paragraph to the preface of the mental disorders listings that provides a cross-reference to the new guidance in 11.00F. This cross-reference reminds adjudicators that cases of TBI can be more complex and may involve both mental and physical impairments. We

believe that these provisions of the final rules will help ensure that individuals with TBI ''do not fall through the cracks.''

Although we do not have a comprehensive list of all the various neurological and mental impairments that can be associated with TBI, we believe that the possible manifestations of TBI are covered in various listings in 11.00 (the neurological listings) and 12.00 (mental disorders). Indeed, other comments submitted by the organization seemed to agree with this conclusion. However, as we have said, we will also consider the comments about our current neurological listings as we review those listings. Finally, in response to this comment, we revised the heading of final 11.00F from the proposed ''Cerebral trauma'' to ''Traumatic brain injury (TBI)'' to make the subject of the section clearer.

Comment: One commenter noted that listing 12.02, ''Organic mental disorders,'' applies to individuals with TBI but suggested that we include some types of affective disorders and mood aberrations in the listing. The commenter was aware that listing 12.04 expressly covers mood disorders, but was concerned that it would not apply to people with TBI.

Response: We did not adopt the comment because listing 12.02A5, ''Disturbance in mood,'' already includes mood disturbances in the listing for organic mental disorders. In addition, even though listing 11.18 does not refer to listing 12.04 for evaluating an individual with cerebral trauma, we can use listing 12.04 to evaluate a claim involving TBI if the individual has a medically determinable mood disorder.

Comment: An individual submitted several comments, a complete clinical reference text, and chapter abstracts from a draft book on numerous aspects of TBI and related neuropsychological impairments. Some comments referred to proposed 11.00F, while others referred to other parts of the proposed rules as they relate to TBI. In general, the commenter approved of the separate discussion of TBI in proposed 11.00F, including our recognition of the fact that symptoms evolve over time. However, the commenter believed that the DSM–III–R, upon which the diagnostic criteria in proposed listing 12.02 were based, did not capture the full range of psychopathology associated with TBI. The commenter found the term ''organic mental disorders'' vague, overly inclusive, and archaic. The commenter recommended that the listing specify the etiology of the trauma and the range of dysfunctions as determined by modern neuropsychological research and clinical experience.

Response: We thank this commenter for the favorable comments and for all the reference materials, which present an excellent discussion of many of the problems associated with evaluating TBI. Our goal in proposed 11.00F was to provide additional guidance to address these problems, and we appreciate that the commenter finds the paragraph helpful. With respect to the diagnostic criteria found in listing 12.02, however, we do not share this commenter's view of the DSM–III–R. Nor do we believe that this mental disorder listing, or any other, needs to refer specifically to etiology or to the entire range of symptoms determined by research and clinical experience.

As we explained in the preambles to these rules when they were proposed (56 FR at 33130) and the final rules revising the childhood mental disorders listings (55 FR at 51214, 51215), we used the DSM–III–R as the basis for the diagnostic criteria in our mental disorders listings because this reference manual is widely used and accepted in the psychiatric and psychological communities. We believe the common understanding it provides makes it the most useful resource for these listings. We recognize that some clinicians may prefer greater diagnostic specificity than that found in the DSM–III–R (or DSM–IV) or these listings. Nevertheless, as we also explained in the preambles, the diagnostic criteria in the mental disorders listings are not bound by those in the DSM–III–R (or DSM–IV), nor was it our purpose to include every mental impairment or every symptom or sign of the disorders that are listed. The focus of our disability programs is to determine the extent of the functional limitations imposed by a medically determinable impairment(s). Hence, instead of attempting to catalogue every possible mental impairment, these listings provide examples of some of the impairments we consider severe enough to be disabling under our program requirements. We do not discount impairments that are not listed; we evaluate them using our rules for equivalence.

In selecting the diagnostic criteria for these listings, we employ an atheoretical approach with regard to etiology, primarily because our program focus is on functional limitations, and etiology is therefore of less significance to us. Also, we believe it would be very difficult, if not impossible, to obtain evidence relating to the pathophysiologic processes of all the mental disorders we evaluate. Further, we recognize that etiology may be a controversial area for some mental disorders. Thus, its introduction into our criteria might prove to be an obstacle to clinicians of varying theoretical orientations.

Comment: The same commenter believed that professionals who make disability determinations should be aware of the mechanism of brain trauma, its pathophysiological and pathoanatomical effects, and the proper documentation (within the scope of their own professions) of neurobehavioral impairment and the emotional effects of accidents and of being impaired. The commenter recommended that we establish specialty qualifications for these professionals, such as special neuropsychological training or certification as a Diplomate in Clinical Neuropsychology for psychologists.

Response: We agree that the professionals who make our disability determinations should be properly trained to evaluate all types of impairments. This includes TBI, with all the factors the commenter described. We disagree, however, that we need additional qualifications for these professionals. Our current qualification standards for medical and psychological consultants are outlined in §§ 404.1616 and 416.1016. We do not believe it necessary or practicable to establish more stringent standards for those who would evaluate one type of impairment. To do so would restrict the pool of qualified specialists available to State agencies.

Nevertheless, we recognize that TBI cases can be difficult to evaluate. That is one reason we included 11.00F in these rules. We have issued guidance for evaluating these cases in the past, and we will issue internal operating guidelines and training material to supplement the information in final 11.00F to ensure that all professionals who evaluate cases involving TBI have the latest information. We also will provide additional guidance to any State agencies requesting clarification of specific issues.

Comment: The same commenter stated that TBI is ''best documented through a wide range examination, including a thorough interview.'' The commenter pointed out that using single tests in isolation, without baseline evidence, is below the standards of acceptable practice because test results must be considered in the context of the interview, the individual's IQ, and his or her educational and vocational background. The commenter also provided detailed information about the kinds of evidence that would be necessary to establish a thorough record

in TBI cases and standards for establishing the validity of testing. The commenter encouraged the use of documentation supplied by health care providers.

Response: We agree that TBI is best documented by a comprehensive examination which includes a thorough interview. We also agree that considering single tests in isolation is inappropriate and that all test results must be considered in the context of all other evidence to establish a complete picture of the individual's impairment and level of functioning.

We also agree that tests should have suitable psychometric standards and should be supplemented by useful qualitative procedures. For this reason, when we proposed revisions to the mental disorders listings, we incorporated existing operating instructions regarding the salient characteristics of a good test into the sixth paragraph of proposed 12.00D. This paragraph, final 12.00D5c, concludes with a sentence which states: ''In considering the validity of a test result, we should note and resolve any discrepancies between formal test results and the individual's customary behavior and daily activities.''

Comment: The same commenter expressed concern about the evaluation of children with TBI. He noted that an undeveloped and thus resistive or disorganized child may not be able to take a conventional psychological examination, and this inability to be tested may itself be a sign of dysfunction.

Response: We agree with this commenter's observations. One very important policy principle in our rules, which we follow in both childhood and adult claims, is that the evaluation of evidence should result in an assessment of the individual's functioning on a longitudinal basis. We recognize that single examinations and tests may or may not accurately reflect an individual's ability to function in normal settings. This policy principle is reflected in 112.00D of the childhood mental listings, as well as in our rules for evaluating disability in children under title XVI, beginning at § 416.924.

12.00 Mental Disorders

12.00B Need for Medical Evidence

Comment: One commenter suggested that we expand the definition of psychiatric signs in the third sentence of proposed 12.00B to include reference to specific abnormalities of ''attention'' and ''perception.''

Response: We partially adopted the comment. We modified the sentence in final 12.00B to indicate that the specific abnormalities cited are examples, not an all-inclusive list, and we revised the examples in the section. In response to the comment, we changed the example of contact with reality to an example of abnormality of perception.

In selecting examples of psychological abnormalities to include in the final definition of psychiatric signs, we did not add ''abnormalities of attention'' because it is covered by ''abnormalities of behavior.'' However, we substituted the suggested ''abnormalities of perception'' for our prior reference to ''abnormalities of contact with reality'' because ''abnormalities of perception'' is a more specific example. We also changed ''abnormalities of affect'' to ''abnormalities of mood'' to reflect current diagnostic nomenclature. We added abnormalities in ''development'' to the list because some psychological abnormalities are first evident in childhood and continue into adulthood.

The third sentence of 12.00B was an exact restatement of the third sentence of §§ 404.1528(b) and 416.928(b), the regulations that define the term ''signs,'' and was also repeated in 112.00B of the childhood mental listings. Therefore, to reflect the changes in final 12.00B, we made similar modifications to the definition of psychiatric signs in those sections.

Comment: One commenter was concerned that we cited psychiatrists and psychologists as the only examples of appropriate medical sources in the third sentence of proposed 12.00B. The commenter said that many medical personnel, such as nurses, social workers, and physicians' assistants, are qualified to recognize signs of mental impairment. Another commenter suggested that we include physiatrists and neurologists in the list of examples.

Response: We accommodated the comments. We agree that no relevant source of evidence should be overlooked when developing claims involving mental impairments. Our intent in providing the two specific examples of appropriate medical sources in proposed 12.00B was not to diminish the value of evidence provided by other sources, but to identify which of the acceptable medical sources cited in §§ 404.1513(a) and 416.913(a) usually provide evidence in claims involving mental impairments. While we could have cited other physicians, such as physiatrists and neurologists, in this list of examples, we would not have included nurses, social workers, and physicians' assistants in the list. The latter are defined as ''other sources'' of evidence in §§ 404.1513(e) and 416.913(e) and are not ''acceptable medical sources'' who can provide evidence to establish the existence of a medically determinable mental impairment. Such sources can, however, provide very valuable information about the severity of an impairment(s) once the existence of such an impairment has been established with evidence from an ''acceptable medical source.''

As a result of these two comments, we again looked at the need to provide specific examples of appropriate medical sources in 12.00B. Since the purpose of this section of the preface to the listings is to discuss the need for medical evidence and not who can supply it, we decided it was unnecessary to provide any examples and deleted those we had proposed from the third sentence of final 12.00B.

12.00C Assessment of Severity

Comment: We received five comments about our proposal to change the example of a marked limitation in activities of daily living in the second paragraph of proposed 12.00C1. All of the commenters asked us to retain the prior example of an individual who is able to cook and clean but is too fearful to leave the immediate environment of home and neighborhood, saying that it was still useful and appropriate. In addition, most did not object to our retaining the proposed example of an individual who cannot perform a ''wide range of daily activities * * * independently.'' However, one commenter thought that the proposed example was too imprecise to be useful.

Response: We did not adopt the comments asking us to restore the prior example, but we have replaced the example in the second paragraph of final 12.00C1 with more descriptive text in response to the last comment.

We did not reinstate the example from the prior rules because it describes a person with agoraphobia. We agree with the commenters that it is still an appropriate example of a marked limitation in activities of daily living. Nonetheless, we deleted it because we were concerned that, as the sole example, its specificity could result in too narrow an interpretation of what constitutes a marked limitation in this area.

We agree with the last commenter that the example we proposed required too many factual assumptions about what constituted independence and a ''wide range of daily activities'' to be helpful. Therefore, in the final rules, we replaced the proposed example with a sentence describing some of the considerations for assessing limitations in activities of daily living. We believe that this descriptive approach will be

more helpful than any example providing a single, narrow fact pattern.

Comment: One commenter suggested that the discussion of task completion in proposed 12.00C3 should also address the quality and accuracy of the tasks being completed, as well as their timeliness.

Response: We adopted the comment. In the first sentence of the first paragraph of final 12.00C3, we inserted the words ''and appropriate'' between the words ''timely'' and ''completion.'' Thus, the final sentence defines concentration, persistence, or pace in terms of the individual's ability to sustain focused attention and concentration of sufficient length to permit the timely and appropriate completion of tasks commonly found in work settings.

We also added a new fifth paragraph to final 12.00C3 similar to the paragraphs in 12.00C1 and 12.00C2 that define the term ''marked'' by ''the nature and overall degree of interference with function.'' The new paragraph indicates that we may find a marked limitation in concentration, persistence, or pace even though the individual can complete many simple tasks if the impairment nonetheless interferes seriously with the individual's ability to complete those tasks in accordance with quality and accuracy standards. However, the provision also states that deficiencies in concentration, persistence, or pace that are apparent only in performing complex tasks would not necessarily satisfy the intent of the paragraph B3 criterion. An individual who is unable to do complex tasks, but who is able to do simple tasks independently, appropriately, and effectively, may or may not be disabled, and may not have a ''marked'' limitation in concentration, persistence, or pace.

Comment: Several comments addressed the proposal to reverse the order of the second and third sentences of prior 12.00C3 and to characterize the ability to complete household tasks as an ''example'' of a way to assess a person's ability to concentrate under this criterion. The commenters pointed out that individuals who cannot tolerate work stress may nevertheless be able to complete household tasks. Two commenters noted that the proposed example was illogical in context because it followed a sentence that explained that difficulties in task completion are best observed in ''work and work-like'' settings. The commenters believed that the household is not a work-like setting. One commenter thought that in the prior rules the reference to household routines made sense because it came before the statement about the observation of deficiencies in work or work-like situations, not after.

One commenter recommended that we delete the example. The commenter noted that the example did not address the fact that households can be highly structured and supportive environments and that it was silent about the need to evaluate the pace and timeliness of household chores, two factors that might indicate an inability to function at a competitive level.

Response: We adopted the comments, although we believe that it is important to consider an individual's activities in all settings to draw reasonable inferences about his or her abilities to tolerate stress in the workplace, especially because not all individuals have recent work histories. Thus, we consider the ability to complete tasks in other settings when we assess the degree of limitation the impairment(s) imposes in this functional domain.

Nevertheless, we agree with the commenters that the example could have been confusing following a sentence about ''work and work-like settings.'' We also agree that the ability to do household activities does not necessarily correlate with the ability to do work tasks. Therefore, we made a number of revisions in the final rules. First, we deleted the example of everyday household routines in the first paragraph of final 12.00C3, as suggested by the commenter. Second, we broadened and clarified the second sentence by deleting the reference to ''work-like'' settings and indicating that, while limitations in the ability to complete work tasks are best observed in work settings, such limitations may also be reflected by limitations ''in other settings.'' This will include ''work-like'' and household settings, but is not necessarily limited to such settings.

Third, we also believe that some type of cautionary language is needed in this portion of the preface. Thus, we added a new fourth paragraph to final 12.00C3 that reminds adjudicators to use great care when drawing inferences about an individual's ability to complete tasks in work settings based on his or her ability to complete tasks in other settings. This discussion notes, among other things, that other settings can be highly structured and supportive.

Comment: Several of the above commenters suggested that we provide examples of task completion related to work. Three of the commenters asked us to restore the examples of work tasks from the prior rules.

Response: We adopted the comments. We restored the examples of filing index cards, locating telephone numbers, and disassembling and reassembling objects in a parenthetical example at the end of the first sentence of the third paragraph of final 12.00C3.

Comment: One commenter recommended that we modify the beginning of the last sentence in the first paragraph of proposed 12.00C3, which referred to ''direct psychiatric examination,'' to acknowledge that psychologists perform clinical evaluations and mental status examinations as well as conduct psychological testing. In addition, the commenter suggested that we revise the latter part of this sentence to address situations in which, due to the nature of the individual's disorder or social isolation, additional evidence of the individual's ability to complete tasks cannot be obtained to supplement findings obtained during a mental status examination or psychological testing session.

Response: We adopted the comments and the substance of the suggested revisions. In using the word ''psychiatric,'' we did not intend to exclude psychologists who perform clinical examinations. Rather, we intended only to distinguish between psychiatric evaluations (such as formal mental status examinations) and psychological testing. This could have been inferred from the phrase ''mental status examination or psychological test data'' in the second clause of the sentence, but we agree that the proposed rules could have been clearer. To clarify the rules, we revised the third sentence of the first paragraph of final 12.00C3 to refer to ''clinical examination'' instead of ''direct psychiatric examination.'' The term ''clinical examination'' includes formal mental status examinations and other ''psychiatric'' examinations, as opposed to psychological testing. We did not expand the sentence to say ''direct psychological or psychiatric examination,'' as suggested by the commenter, because we believe that the phrase could be read to mean that psychologists and psychiatrists perform different kinds of clinical examinations, not that these examinations can be performed either by psychologists or psychiatrists, as we believe the commenter intended.

With regard to the second comment, we deleted the latter part of the proposed sentence, including the phrase ''alone should not be used,'' and added a new sentence. The fourth sentence of the first paragraph of final 12.00C3 explains that whenever possible, we will supplement a mental status examination or psychological test data with other available evidence. We also emphasized the point in the new fourth

paragraph of final 12.00C3, which stresses that the ability to complete tasks must be assessed by the evaluation of all the evidence.

Comment: Two commenters recommended that we revise the first sentence of the second paragraph of proposed 12.00C3 to acknowledge that serial threes, as well as serial sevens, are used for the assessment of concentration in some individuals.

Response: We adopted the comment.

Comment: One commenter suggested we include examples of specific psychological tests of intelligence and memory in the last sentence of the second paragraph of proposed 12.00C3.

Response: We did not adopt the comment. The purpose of this section of the preface to the listings is to discuss the assessment of the third paragraph B criterion, not the various psychological tests that may be administered for this purpose.

Comment: Two commenters took issue with the parenthetical phrase, ''which may include a loss of adaptive functioning,'' in the second sentence of proposed 12.00C4 and in the paragraph B4 and C1 criteria of the proposed listings. Both commenters contended that it was inappropriate to indicate that deterioration resulting from an episode of decompensation ''may include'' a loss of adaptive functioning. One of the commenters recommended deleting the phrase because it is unnecessary. The other commenter suggested we modify the sentence to read ''which may be considered to be a loss of adaptive functioning.''

Response: We adopted the comments. We revised the first paragraph of final 12.00C4 so that it now refers only to ''episodes of decompensation.'' We deleted the phrase ''causing deterioration'' and the parenthetical statement, ''which may include loss of adaptive functioning,'' and instead defined ''episodes of decompensation'' as ''exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning.'' We believe these changes better characterize the episodic nature of the functional limitations that the paragraph B4 and C1 criteria are designed to capture. We did not retain the word ''deterioration'' since it is often associated with long-term progressive changes in functioning; however, we added a new sentence that provides examples of how episodes of decompensation may be demonstrated.

In addition, we deleted the last sentence of proposed 12.00C4, which was the same as the last sentence in the prior rules. The sentence described some stressors common to work environments, such as decisions, attendance, and interactions with supervisors. Because we removed the focus of the section from stress in work environments, there is no reason to continue to describe work-related stresses in this paragraph. Moreover, sometimes the event that triggers the episode is not readily discernible, and we are more concerned with the effect of the stressor (i.e., decompensation), not its cause at this stage of the sequential evaluation process. Of course, when we determine whether an impairment is ''severe'' or assess an individual's RFC, we may want to know specifically the kinds of stressors and the degree of stress that result in exacerbations to determine what an individual is able to tolerate in work environments. Nevertheless, the severity level of the listings is such that the frequency and severity of the episodes alone are sufficient at this step.

As a result of these changes, we also deleted the words ''which cause the individual to deteriorate'' and ''causing deterioration'' from the references to episodes of decompensation in final §§ 404.1520a(c)(3) and (c)(4) and 416.920a(c)(3) and (c)(4), the second sentence in the introductory paragraph of final 12.00C, and the fourth sentence of final 12.00D1a. We made similar changes in the paragraph B4 and C1 criteria within each listing.

Comment: One commenter objected to the removal of the reference to withdrawal from the stressful situation found in the first sentence of prior 12.00C4. The commenter was concerned that, under stress, many individuals will withdraw from the stressful situation rather than stay and exhibit a deterioration in their functioning.

Response: We accommodated the comment in the aforementioned revision to the first paragraph of final 12.00C4. We never intended to eliminate withdrawal as a possible consequence of an episode of decompensation. Rather, as we stated in the preamble to the proposed rules (56 FR at 33132), we eliminated the specific reference to it for the opposite reason. Withdrawal is just one possible manifestation of decompensation; we did not want our revised rules to imply that it is the only manifestation we would consider.

Although we did not restore the word ''withdraw'' in the final rules, we built the concept into the revised definition of ''episodes of decompensation.'' Thus, in the first sentence of the first paragraph of final 12.00C4, we explain that the increase in symptoms or signs is ''accompanied by loss of adaptive functioning,'' in effect including a deterioration in the functional level in a given environment from which the individual could withdraw. More explicitly, in the second sentence, we further state that ''[e]pisodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation * * *.'' The reference to a requirement for ''a less stressful situation'' obviously includes withdrawal from the stressful situation.

12.00D Documentation

Comment: Two commenters expressed concern about the medical documentation requirements in the proposed rules. One commenter, who did not refer to any particular provisions, said the proposed rules relied excessively on medical personnel and psychiatric records for decision making. The commenter expressed concern that many individuals with mental impairments receive only cursory evaluation and treatment, or even no treatment, and that it is difficult for case managers in the State mental health services to obtain more comprehensive reports. Moreover, the commenter explained that the medical personnel examining such individuals may not be sufficiently familiar with the individuals to provide the information we require. The commenter also stated that the records of case managers are often scanty and may not provide the functional information required to document the paragraph B criteria.

In a similar comment, the second commenter was concerned that proposed 12.00D placed too much reliance on the need to obtain evidence from treating sources. The commenter said that many individuals with mental impairments have no history of being treated for their mental disorders. Thus, this commenter said our emphasis on ''medical'' evidence tends to reward those who can afford treatment while penalizing poorer individuals. The commenter also noted that many individuals do not seek treatment for mental disorders because of the social stigma associated with these disorders.

Response: We clarified the rules in response to the comments. We share the concerns raised by both commenters and realize that obtaining medical evidence relating to an individual's mental impairment can be difficult. Nevertheless, we cannot ignore the specific statutory requirements for obtaining medical evidence. Furthermore, we are also required to try to obtain medical information from treating sources.

Our rules do not, however, require individuals to establish their claims solely on the basis of treating source evidence. If an individual does not have a treating source, or a treating source is unable or unwilling to provide sufficient information for us to make a determination or decision, we can purchase one or more consultative examinations, if necessary. Other regulations explain how we assist individuals in meeting their responsibility to submit evidence to support their claims.

When we evaluate the impact of an individual's impairment(s) on his or her functioning, we do not confine our inquiry to the medical evidence alone. As we have explained above, various other regulations, including final §§ 404.1520a and 416.920a, make clear that once we have established the existence of a medically determinable impairment, we consider all evidence in the case record that is relevant to our assessment of the individual's ability to function. This includes information from both medical and nonmedical sources. Proposed 12.00D was consistent with this policy, requiring medical evidence to establish the existence of a medically determinable impairment.

Nevertheless, in response to these and other comments, we substantially reorganized and revised final 12.00D to clarify our policies, as we discuss in detail in the explanation of the final rules in this preamble. Final 12.00D1a still requires medical evidence from acceptable medical sources. In combination, however, final 12.00D1, 12.00D2, and 12.00D3 emphasize that we will use information from all sources (medical and nonmedical) to assess the longitudinal picture of an individual's impairment(s) and the limitations it imposes.

Comment: We received a number of comments about the first two sentences in the second paragraph of proposed 12.00D concerning the usefulness of functional information provided by claimants. One commenter said that our statement that the individual ''usually can best describe his or her own functional limitations'' was ''naive thinking'' and ''unsubstantiated,'' and another commenter stated it was ''incorrect'' because individuals with brain damage may not be able to describe their own impairments. Most of the commenters, however, supported the provision, but asked us to clarify or expand it.

Four commenters recommended that we also require third party documentation. One commenter stated that such evidence should be obtained in each case to corroborate the individual's allegations. The other three commenters viewed third party reports as a means to protect claimants who are ''unreliable'' reporters because they are out of touch with reality or because they have disorders characterized by denial or lack of insight, such as psychoactive substance dependence disorders. In addition, one commenter suggested that we describe the form and manner in which the claimant's reports will be acceptable and delete any statements, such as those in the twelfth paragraph of proposed 12.00D, that impugn the value of psychometric measures based on self-reports.

Response: We revised the final rules in response to the comments. We believe that obtaining statements from the individuals is important, and that, with the exceptions noted by the latter commenters, individuals with mental impairments can provide much useful information and often are the best sources of information about their impairments. In response to the comments, however, we modified the final rules to remove the statement that such individuals can ''usually'' best describe their functional limitations and provided some of the additional guidance requested by the commenters.

The first sentence of final 12.00D1b, ''Information from the individual,'' now states that ''[i]ndividuals with mental impairments can often provide accurate descriptions of their limitations.'' We also added a new third sentence requiring an attempt to obtain information from the individual when the individual is willing and able to provide such information.

This does not mean that we will base our assessments solely on self-reports. We will consider the medical and other evidence in addition to an individual's statements, and any discrepancies must be resolved. This type of assessment process is consistent with standard medical practice: Medical sources consider their patients' allegations together with the signs they observe and any laboratory findings and third-party reports they obtain. Thus, in a new last sentence of the paragraph, we provide that statements from the individual must be carefully examined in light of all the evidence in the case record to determine whether the individual's statements are consistent with the other evidence and whether additional information is needed. Such information can come from medical or third-party reports, or both. We did not make third-party contact a requirement in every case because each case is different, and we believe the need for additional evidence should be dictated by the facts of each individual case.

We also agree that not all individuals with mental impairments are willing or able to fully or accurately describe the functional limitations arising from their impairments. Therefore, we added a new fourth sentence to the paragraph stating this policy.

Beyond these changes, we do not believe it is necessary or even possible for these final rules to dictate the form and manner in which self-reports will be acceptable. Each case has its own unique set of circumstances, and functional information from individuals comes to us in a variety of ways. For example, we may obtain information through our disability claims forms, through responses given in medical or psychological examinations or on standardized psychological tests, through telephone contacts, through written correspondence, and through detailed testimony at disability hearings at reconsideration and administrative law judge hearings.

Finally, we revised final 12.00D7 to be consistent with final 12.00D1b and to address concerns about the value of personality measures that rely on self-reports. We explain the revisions in a later comment and response. We believe the functional information an individual supplies should be an essential part of the disability case development process. We never intended to impugn the value of psychological measures that rely on such information.

Comment: Two commenters recommended that we discuss the Global Assessment of Functioning (GAF) Scale in the introductory paragraphs of final 12.00D. They noted that we referred to the GAF scale in the preamble to the NPRM (56 FR at 33132) and seemed to encourage its use, but then failed to mention it in the proposed rules.

Response: We did not adopt the comment. We did not mention the GAF scale to endorse its use in the Social Security and SSI disability programs, but to indicate why the third sentence of the second paragraph of proposed 12.00D stated that an individual's medical source ''normally can provide valuable additional functional information.'' To assess current treatment needs and provide a prognosis, medical sources routinely observe and make judgments about an individual's functional abilities and limitations. The GAF scale, which is described in the DSM–III–R (and the DSM–IV), is the scale used in the multiaxial evaluation system endorsed by the American Psychiatric Association. It does not have a direct

correlation to the severity requirements in our mental disorders listings.

Comment: Three commenters agreed with our statement in the fourth paragraph of proposed 12.00D that information from past employers about work attempts, behavior on the job, and the circumstances surrounding termination of a work effort is pertinent to determining an individual's ability to function in a work setting. However, two of the commenters pointed out that many individuals with mental impairments are now able to engage in specialized work programs, such as supported employment and transitional employment programs, because these programs provide significant on-the-job supports. Thus, they noted that an individual's success in one of these programs should not automatically be equated with the ability to work independently. They recommended that we revise the fourth paragraph of proposed 12.00D to instruct adjudicators to examine the degree to which an individual in one of these types of programs requires specialized supports in order to hold a job.

Response: We adopted the comments and revised final 12.00D3. We also modified the second sentence in final 12.00H, ''Effects of treatment,'' to emphasize that it is the ability to sustain SGA that must be restored. This recognizes that not all work activity fulfills our requirements for the performance of SGA.

Comment: We received many comments, primarily from psychologists and organizations of psychologists, but also from several advocates and others, about the proposed rules in the fifth, twelfth, thirteenth, and fourteenth paragraphs of proposed 12.00D. Many commenters perceived the proposed revisions as an attempt to deemphasize, discourage, or even preclude the use of psychological testing, especially personality measures and projective types of techniques.

Many of the commenters focused on what they considered to be denigrating comments about psychological testing in the proposed rules and an apparent change in our policy. Many commenters said that psychological testing alone should not be the sole basis of the decision, but neither should it be disregarded, because it can provide important additional information for a disability evaluation. A number of commenters said that, while such testing may not be a substitute for some of the findings we require, it often provides objective documentation of the basis for the findings. The commenters further observed that the same criticisms we made of psychological testing could also be made of x rays, CAT scans, EEGs, and other tests that document the presence or absence of a condition but may not be sufficient as a basis for making a decision. In a similar vein, many commenters also discussed the drawbacks of evidence from self-reports, clinical examinations, and lay evidence, and again pointed out the need to consider all of the relevant evidence. They said that, just as no single test should be dispositive, no test should be unacceptable either.

Some commenters discussed the objectivity and value of psychological testing. Some said that the tests we had singled out satisfy our criteria for a ''good test'' and, therefore, ought to be ''acceptable.''

Some commenters pointed out that the first sentence of the proposed fifth paragraph (which excluded the purchase of ''consultative examinations employing psychometric testing'' unless the required documentation of a mental impairment could not be obtained from other sources) seemed to be inconsistent with other statements in the adult and childhood mental disorders listings. At least one commenter questioned the practical utility of the proposed rules, asking how we would evaluate a report if it was based on both ''acceptable'' and ''unacceptable'' tests.

Some commenters thought that the reason we proposed the rules was that we do not always get appropriate information from individuals who perform psychological examinations for us. Some thought our adjudicators do not always request psychological tests that are appropriate for evaluating individual claims. These commenters said that instead of narrowing the use of psychological testing, we should instead provide more guidance to psychologists and establish standards for our adjudicators to determine the kinds of psychological tests to request.

The commenters offered several other arguments for retaining the prior rules or making other revisions to the proposed rules, which we do not summarize here in view of our response.

Response: We adopted many of the comments. We never intended to denigrate the validity and reliability of psychological testing or to reduce it to a subordinate or ''last resort'' position in the disability evaluation process. We also did not intend to present an unbalanced approach to the relative merits of the contents of the evidentiary record. Psychological testing should not be ignored or dismissed as being of lesser value to the disability evaluation process than any other relevant and available evidence. The results of well-standardized psychological tests can provide valid and reliable data useful to the disability evaluation process.

In response to the comments, we deleted the first sentence of the fifth paragraph of proposed 12.00D. Our intent in proposing the sentence was simply to emphasize the need to obtain all available information from sources of record before deciding to purchase a consultative examination for any other necessary documentation. We did not intend to prohibit the use of psychometric testing. This is consistent with our general policy on purchasing consultative examinations required by the Act and set out in our regulations. (See, *e.g.,* §§ 404.1512(f), 404.1519a(a), 416.912(f) and 416.919a(a)). We never intended, here or anywhere else in the proposed rules, to relegate psychometric testing to a subordinate role or to use it only as a ''last resort.'' We agree, however, that the proposed sentence could have given that impression. Since we already have detailed rules for the purchase of consultative examinations, there was no need to retain or revise the sentence and we deleted it.

We replaced the proposed twelfth and fourteenth paragraphs (the proposed paragraphs that addressed personality measures and projective techniques) with final 12.00D7, ''Personality measures and projective testing techniques.'' Comments about the twelfth paragraph pointed out that tests such as the MMPI fulfill all the salient characteristics of a good test under our rules, even though they are based on self-report. Other comments noted unclear references, such as the phrase, ''objective units of functional behavior,'' and the phrase, ''limited applicability,'' which one commenter thought could be misinterpreted to mean ''useless.'' Comments about the fourteenth paragraph argued that projective techniques can also yield valid and reliable data relevant for purposes of diagnosis and assessment of functional capacity, particularly because conclusions about the impairment are not made solely from the results of the projective techniques. Rather, those results are integrated with a comprehensive history, mental status examination, and objective psychological testing.

One commenter offered us alternatives for both proposed paragraphs, some of which we adopted. Final 12.00D7 addresses both personality testing and projective techniques, and explains that they may provide useful data for evaluating several types of mental disorders. Consistent with the public comments, we also provide that the results should be corroborated by other evidence,

including the results of other psychological tests, information obtained in the course of the clinical evaluation, and information from all relevant sources. We agree with the commenters that personality measures and projective techniques may provide valid and reliable data for our purposes. We also agree that the most reliable conclusions are drawn about an individual's mental impairment(s) and how it impacts on functioning from the overall assessment of all the relevant evidence available, including any psychological testing.

We did not include the second sentence of the twelfth paragraph of proposed 12.00D in final 12.00D7. We agree that the negative implications about the value of self-reports were inconsistent with other statements in the listings about the value of such information. Further, we recognize that the history, mental status examination, and standardized assessment procedures all rely to some extent on information reported by the individual.

In final 12.00D9, ''Screening tests,'' we revised the proposed thirteenth paragraph. We agree with several commenters that the phrase ''primary evidence'' in the third sentence of the proposed paragraph was unclear. We did not intend to prohibit the use of screening tests in the proposed rules. Rather, we only intended to indicate that, generally, such tests cannot be used apart from further testing, except when the response pattern is so obviously atypical as to render further testing unnecessary. Therefore, in final 12.00D9, we deleted the statements that singled out particular tests and provided that screening tests may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. Thus, screening tests are not generally considered appropriate primary evidence for disability determinations. The final paragraph is based on the first, fourth, and fifth sentences of the thirteenth paragraph.

We also believe the restructured and revised provisions about psychological testing in final 12.00D clarify our intent with regard to its applicability to our disability programs and the issues raised by the commenters. We describe the changes, structure, and content of these final rules in the explanation of changes section of this preamble.

Comment: Several commenters took issue with our reference to ''a psychologist, psychiatrist, or other physician specialist'' in the fifth and seventh paragraphs of proposed 12.00D. They contended that psychiatrists and other physicians are not qualified to either administer or interpret psychological testing. Another commenter asked us to define the term ''other physician specialist'' and to provide examples.

Response: We responded to these comments by clarifying the final rules to better reflect our intent. We deleted the reference to ''a psychologist, psychiatrist, or other physician specialist'' and used the terms ''qualified specialist'' and ''specialist'' in final 12.00D5a and 12.00D5b. In final 12.00D5a, we defined a ''qualified'' specialist as one who is currently licensed or certified in the State to administer, score, and interpret psychological tests and who has the training and experience to perform the test.

We recognize that administering and interpreting standardized psychological assessment procedures is quite prominent in the training of psychologists. We also recognize that training in administering and interpreting such instruments is available to other members of the medical profession as well. Physicians other than psychiatrists (''other physician specialists'') who might receive such training include, among others, neurologists and pediatricians. We intended in the NPRM to emphasize that we will accept as valid for our program purposes any psychological test results administered and interpreted by a qualified specialist.

Comment: One commenter urged us to use the term ''licensed psychologist'' throughout the rules to avoid any question as to who is a psychologist. Another commenter asked if our requirements would preclude the use of tests performed by psychometricians under the supervision of licensed psychologists.

Response: We did not adopt the first comment. We do not believe it necessary to refer to ''licensed'' psychologists in these rules since we discuss licensing or certification of psychologists in other regulations, which explain who qualifies as an acceptable medical source. (See §§ 404.1513 and 416.913).

Tests performed by properly trained and experienced psychometricians who work under the supervision of licensed psychologists are acceptable for our program purposes.

Comment: One commenter suggested inserting the phrase ''or a range of responses or behaviors'' in the last sentence of the fifth paragraph of proposed 12.00D to acknowledge that some tests elicit a particular response or behavior while others elicit a range of responses or behaviors.

Response: We agree that some standardized psychological tests are designed to elicit a particular response while others elicit a range of responses. However, instead of inserting the suggested phrase, we simplified the sentence in final 12.00D5b to state that psychological tests are best considered as ''standardized sets of tasks or questions designed to elicit a range of responses.'' The word ''response'' would include a ''behavior,'' and the phrase ''a range of responses'' can refer to a single response or denote a variety of responses.

We also believe it is important that the discussion of psychological testing acknowledge that such testing can provide other useful data and that any test reports should include both the objective data and any clinical observations. Therefore, final 12.00D5b concludes with a slightly edited version of the first two sentences from the ninth paragraph of proposed 12.00D.

Comment: One commenter thought that the explanation of the terms ''validity'' and ''reliability'' in the sixth paragraph of proposed 12.00D, which described the salient characteristics of a good test, was an excellent clarification of terms. Another commenter, while commending our efforts to identify those characteristics, thought that the American Psychological Association's ''Standards for Educational and Psychological Testing'' (1985) provides more elaborate and relevant definitions that apply equally to all assessment techniques. A third commenter, while finding no fault with the proposed paragraph, found it inconsistent with the statements regarding the use of psychological testing in other paragraphs of proposed 12.00D. A fourth commenter suggested an alternative for the fourth salient characteristic of a good test (''wide scope of measurement'') because the proposed rules required that a psychological test measure a broad range of facets or aspects of the domain being assessed when, in fact, psychological tests provide a sample of an individual's behavior. Another commenter recommended that we delete the seventh paragraph of proposed 12.00D since it implied that an adjudicator could reject any test results that do not satisfy all four of the salient characteristics.

Response: We did not make any major changes to the four salient characteristics in final 12.00D5c. We believe the characteristics are sufficiently detailed for our purposes and capture the essence of the American Psychological Association's definitions. As we explain in an earlier response to

a comment, we never intended to relegate psychological testing to a secondary role. We believe that the revisions to final 12.00D will make clear that these characteristics are not inconsistent with our approach to psychological testing. We also believe that the description of the fourth characteristic in the final rules captures the fourth commenter's concerns, when considered with the rest of our discussion.

We did, however, modify the description of the third characteristic, appropriate normative data, by replacing the phrase ''must be comparable'' with ''can be compared'' and deleting the word ''recent.'' Both are editorial changes. The former revision makes the description of the characteristic easier to read. With the latter revision, we want to avoid any implication that these rules set a precise time limit on the acceptability of a measure still in common use in the psychological community.

In addition, we deleted the seventh paragraph of proposed 12.00D because we agree that it could have been misleading. We did not intend that any psychological test results submitted as part of the evidentiary record be arbitrarily dismissed as invalid simply because they failed to satisfy one or more of the four criteria for a good test outlined in final 12.00D5c. We would generally require a test we purchase as part of a consultative examination to satisfy all these criteria, and we would expect any psychological test results submitted by individuals to satisfy all the criteria. We will not, however, ignore or reject test results that do not satisfy all the criteria. As we explain in final 12.00D1 and in various other places in our regulations, we consider all evidence obtained when we make a determination. Any inconsistency between test results and other evidence would be resolved prior to making a determination.

Comment: One commenter recommended that, since the eighth paragraph in proposed 12.00D related directly to intelligence testing, we should place it after the eleventh paragraph of proposed 12.00D.

Response: We reorganized the rules, as we describe in the explanation of changes section of this preamble.

Comment: One commenter recommended changing ''should'' to ''shall'' in the second and third sentences of the ninth paragraph of proposed 12.00D, the paragraph that explained that psychological testing can also provide other useful data aside from the test results. The second sentence (now in final 12.00D5b) explained that test results should include both the objective data and a narrative description of clinical findings. The third sentence (now in final 12.00D6a) explained that narrative reports should comment on whether the specialist considered the IQ scores to be valid and consistent with the individual's developmental history and degree of functional limitation.

Response: We did not adopt the comment because it would have resulted in the same problem that was in the seventh paragraph of the proposed rules; it could have suggested that we would reject or ignore reports that did not satisfy the description. We used the word ''should'' to describe what we expect in reports of psychological testing. It is, therefore, appropriate in these contexts. In final 12.00D5b, we substituted the phrase ''any clinical observations'' for the proposed phrase ''a narrative description of clinical findings,'' to clarify that the report should include the specialist's observations about the individual's ability to do the test.

Comment: One commenter noted that we incorrectly identified the standard deviation of the revised Stanford-Binet scales as 15 in the tenth paragraph of proposed 12.00D, when it is actually 16.

Response: We corrected the second sentence in final 12.00D6c by changing the example so that it refers to ''the Wechsler series.'' Additionally, we made corresponding technical revisions to the ninth paragraph of 112.00D.

Comment: One commenter suggested that intelligence test scores should be expressed ''in terms of standard deviations from the mean (as not all tests have a mean of 100 and standard deviation of 15) and acknowledgement of the standard error of the measurement.''

Response: We did not adopt the comment. The only rules in these listings that require intelligence test scores are in listing 12.05. The second sentence of final 12.00D6c explains that the IQ scores in listing 12.05 reflect values from tests that are based on a mean of 100 and that use a standard deviation of 15. The third sentence of final 12.00D6c provides for the case in which IQs are obtained from standardized tests that deviate from a mean of 100 and standard deviation of 15 by requiring conversion of the findings on such tests to percentile ranks. This allows us to determine the actual degree of limitation and to compare the findings with those in the listings.

Beyond that, we do not believe that it is necessary to revise the rules as suggested. The IQ of 59 in final listing 12.05B falls between two and three standard deviations below the mean (three standard deviations would be an IQ of 55) on such tests, and we do not want to lower it to conform to a scheme that relies strictly on standard deviations.

Comment: One commenter noted that we used the term ''mental status examination'' in the twelfth paragraph of proposed 12.00D and recommended that we define the term in the final rules and include a list of required elements.

Response: We adopted the comment. We added a new final 12.00D4, which provides a brief description of the mental status examination and its components. The final rules do not provide a formal definition of the term ''mental status examination'' because we believe it is widely used and commonly understood in the mental health community. The rules explain, however, that the mental status examination is performed during the course of a clinical interview and is often partly assessed while the history is being obtained. We then provide a recitation of the elements that generally appear in a report of a comprehensive mental status examination.

Nevertheless, we did not intend to unfairly weigh any particular aspect of clinical assessment, or to attempt to dictate the content of the clinical evaluation. Therefore, although we added a statement about the content of a mental status examination to the final rules, we did not make this a ''required'' list of elements. In the last sentence of the paragraph, we explain that ''[t]he individual case facts determine the specific areas of mental status that need to be emphasized during the examination.''

Comment: One commenter was concerned that the statement in the fifteenth paragraph of proposed 12.00D that ''[e]xceptions to formal standardized psychological testing may be considered'' where appropriate examiners are ''not readily available'' could be subject to different interpretations. The commenter encouraged us to revise the proposed rules so there would be no possibility that a lack of a ''readily available'' psychological consultant could be used as a reason to fail to obtain the documentation necessary to adequately evaluate a claim.

Response: We adopted the comment. We deleted the word ''readily'' in final 12.00D6e. We did not intend to provide a loophole for adjudicators to avoid obtaining pertinent information in assessing any claim. Our procedure is to send an individual to the nearest appropriate resource when the case facts

warrant this type of development. It was our intent in the proposed fifteenth paragraph to address situations in which formal standardized psychological testing may be warranted, but is simply not available, and other evidence must be relied upon to make a determination.

Comment: A number of commenters questioned the inclusion of the last two sentences in the eighteenth paragraph of proposed 12.00D regarding neuropsychological examinations.

Some commenters were concerned that the sentences would have the practical effect of prohibiting the purchase of such tests and would discriminate against individuals who lack the resources to obtain the tests. Other commenters contended that our rules should place greater emphasis on the importance and utility of neuropsychological testing in identifying and evaluating cases where brain dysfunction is an issue.

One commenter said that the discussion of neuropsychological testing in the seventeenth paragraph was biased toward the use of the Luria-Nebraska and Halstead-Reitan. This commenter urged us to reword the discussion to give the examining psychologist the discretion to choose the most appropriate test for a given evaluation.

Another commenter also said that batteries such as the Luria-Nebraska and the Halstead-Reitan may be less effective than developing a suitable battery of tests that are appropriate to the individual's needs. This commenter suggested that we amend our guidelines to require specific tests of frontal lobe function in cases involving TBI.

Response: As a result of these comments, we modified the seventeenth and eighteenth paragraphs of proposed 12.00D (now combined in final 12.00D8).

We deleted the last two sentences of the proposed eighteenth paragraph. Our original intent in including these sentences was not to inhibit the use of neuropsychological testing or to somehow disadvantage those who do not have the resources to obtain such tests. We simply intended to emphasize the highly specialized nature of such testing and the need to exhaust all other more direct avenues before purchasing such procedures. The rule we proposed about considering the purchase of neuropsychological examinations ''only after all other more direct avenues of obtaining the needed documentation have been exhausted'' was very similar to the guidance in the first sentence of §§ 404.1519a(a)(1) and 416.919a(a)(1). The proposed rule also was similar to the rule in §§ 404.1519f and 416.919f, which states that ''[w]e will purchase only the specific examinations and tests we need to make a determination'' in a case. Since we already have such statements in our regulations, we do not believe the preface to the adult mental disorders listings needs to focus on our policies for purchasing consultative examinations.

We did not, however, delete the specific references to the Luria-Nebraska or the Halstead-Reitan. We do not believe the rules we proposed, or the final rules, are biased towards the use of these batteries. We made it clear that they are only examples of neuropsychological tests a qualified specialist may administer. Further, as both the proposed and the final rules provide, the specialist performing the test may select another battery of tests if he or she determines it would be more relevant. To clarify this point, we revised the final rules by substituting the words ''suspected brain dysfunction'' for ''referral issues'' to emphasize that the case facts, not any general preference for one test over another, should dictate what batteries are administered.

We believe this clarification also addresses the last commenter's point. We do not believe that the psychometric examination of frontal lobe function should be required in every case involving TBI. The areas of the brain and function affected by TBI differ according to the nature of the injury and the individual injured. When making determinations under our disability programs, we assess the need to test this specific area on an individual basis.

Comment: One commenter questioned the relevance and placement of the twenty-first paragraph of proposed 12.00D, the last paragraph in 12.00D of the prior rules. The paragraph gave examples of kinds of evidence that should be obtained and considered in cases in which the nature of the individual's impairment precludes standardized intelligence testing.

Response: We deleted the paragraph. Our intent in proposing to retain this paragraph from the former rules was to emphasize that documentation must be provided even in cases in which the cognitive impairment is of such magnitude as to preclude any type of psychological testing. We realized from the comment, however, that the paragraph could have suggested that this was a special case. In fact, we require this kind of evidence in other cases involving other impairments, even when an individual can be tested. Moreover, we believe that the revisions and restructuring of final 12.00D already provide more detail about this issue than the prior paragraph. In addition, other regulatory provisions give considerable detail about various sources of evidence about functioning. Therefore, the proposed paragraph is no longer necessary.

Comment: One commenter recommended that the twenty-second, twenty-third, and twenty-fourth paragraphs of proposed 12.00D have a separate heading.

Response: We adopted the comment. We provided separate headings for each of the last three paragraphs of the proposed rules: ''Traumatic brain injury (TBI)'' (final 12.00D10), ''Anxiety disorders'' (final 12.00D11), and ''Eating disorders'' (final 12.00D12).

Comment: One commenter, who was concerned that the proposed rules meant we would no longer use psychological tests for disability evaluations, wondered whether we would continue to use the Wechsler Intelligence Scales, the Bayley, and similar tests for disability evaluations in childhood cases involving suspected mental retardation.

Response: As we have explained, we will continue to use appropriate psychological tests in our disability evaluations. In any event (except as explicitly noted in the NPRM), the revisions to 12.00D would not have affected the rules in 112.00D, which continue to require the kinds of tests about which the commenter was concerned.

Comment: One commenter thought that we did not effectively utilize the most up-to-date psychological expertise in the proposed rules on psychological testing. This commenter and two others urged us to work closely with the American Psychological Association in formulating the final rules on psychological testing.

Response: We appreciate the commenters' concerns. We try to utilize the most up-to-date knowledge and expertise in all our rules. The individual experts who provided input on the proposed rules included psychologists with years of training and experience in our disability programs, as well as extensive knowledge of psychological testing procedures. Representatives of the American Psychological Association and many other individuals and representatives of public interest and advocacy groups also provided extensive comments on the proposed rules. We carefully considered all these comments in promulgating these final rules.

Comment: We received a few comments about matters that went beyond the scope of the listings, such as the role psychological consultants in the

State agencies should play in determining which, if any, psychological tests should be purchased in developing a claim, the instructions that State agencies should provide to consulting examiners from whom we purchase tests, and costs of testing.

Response: Because the comments exceeded the scope of these rules, we do not address them here. We will consider any recommendations as we formulate our internal procedures and instructions.

12.00F Effects of Structured Settings

Comment: We received three comments about proposed 12.00F. Two commenters indicated that the revisions we proposed to 12.00F were helpful. The third commenter stated that the discussion in this section of the preface should relate the paragraph C1 criterion to the identical paragraph B4 criterion.

Response: The intent of the last comment was unclear; therefore, we did not change 12.00F. Nevertheless, we clarified the paragraph C criteria and their relationship to the fourth paragraph B criterion by adding a new paragraph C2 criterion. This revision highlights the differences between the two sections, as explained under the comments about the paragraphs B4 and C criteria, discussed below.

12.02 Organic Mental Disorders

Comment: One commenter suggested that the more appropriate and clinically meaningful place for the criteria for organic mental disorders is in the neurological listings. The commenter stated that, although it might be worthwhile to note that an individual exhibits symptoms and signs that are consistent with specific categories of mental impairments, when these medical findings are the result of a traumatic injury to the brain, they should be considered in the context of the individual's neurological disorder.

Response: We did not adopt the comment. As we have explained, the diagnostic categories of mental disorders in these listings are based on the major categories of mental disorders found in the DSM. We chose this reference because it is the most widely used and accepted resource in the psychiatric and psychological communities, and its terminology is well-known to other medical and health-care professionals outside these two communities. Further, the diagnostic classification system found in the DSM is compatible with that of the ninth revision of the ''International Classification of Diseases, Clinical Modification'' (the ICD–9–CM), which has been the official system in this country for recording all diagnoses and diseases since 1979. Both the DSM and the ICD–9–CM categorize organic mental disorders as mental rather than neurological.

The fact that we classify organic mental disorders under the mental disorders body system does not mean that we ignore the neurological aspects of disorders such as TBI. One of the main reasons we added final 11.00F to the preface to the neurological listings and placed a cross-reference to it in final 12.00D10 (the 22nd paragraph of proposed 12.00D) was to ensure that our adjudicators give full consideration to both the neurological and mental limitations resulting from TBI.

Comment: We received many comments about the proposed revisions to the paragraph B4 and C1 criteria, first stated in listing 12.02, but repeated throughout the proposed listings. One commenter commended our efforts to more precisely quantify our standards for evaluating episodes of decompensation and another commenter approved of our proposal to remove the requirement that the episodes of decompensation occur in ''work or work-like settings.'' However, these and other commenters were concerned that the proposed criteria would be too rigid.

Some commenters stated that the proposed revisions, which included specific time and duration requirements, would substantially increase the severity level of each listing. These commenters believed that the revisions would thereby preclude numerous favorable determinations or decisions that would have been made at the listing step of the sequential evaluation process under the prior rules. Two of the commenters said that we had not provided any rationale, from either research findings or experience, to justify the tightening of this standard. One commenter believed that anyone who satisfied the proposed paragraph B4 criterion would meet the statutory definition of disability, irrespective of the presence or absence of the other paragraph B criteria.

Other commenters stated that the specificity of the proposed criteria was unreasonable, did not relate to the reality of mental disorders, and did not take into account individual differences. In addition, some were concerned that the proposed changes were not sensitive to the problems individuals with low incomes and mental impairments face, seemed to remove the degree of flexibility necessary for the exercise of appropriate clinical judgment, and ignored the fact that employers generally will not tolerate an individual's inability to function for even short periods of time if the periods of inability occur frequently. Like the first group of commenters, these commenters believed we had compromised the utility of the criteria because only a limited number of individuals could satisfy them. One commenter asserted that the proposed criteria were so rigid that no non-institutionalized individual could meet them, and that no one could satisfy them without being found eligible under the other paragraph B criteria.

In addition, one commenter stated that the evaluation of decompensation had been reduced to such an overly quantitative scale that its qualitative aspects, such as the degree of limitation and its interference with the individual's ability to function, were not addressed. Another commenter expressed concern that the proposed criteria were so specific that they might be enforced too rigidly and possibly be viewed as the preeminent rule on evaluating decompensation when deciding equivalence or assessing a claim at a later step in the sequential evaluation process.

Three other commenters addressed the documentation requirements of the proposed criteria. One commenter believed the rigidity of the criteria was incompatible with the principles in the third paragraph of proposed 12.00D, which recognize that an individual's level of functioning may vary considerably over time. This commenter also thought the proposed criteria were unrealistic because mental health providers report that they are often unable to distinguish and date discrete episodes of decompensation, especially when an individual is being treated on an outpatient basis. The other two commenters suggested that the adequacy of the evidence required to document the decompensation criteria would be dependent upon the individual's financial resources. One commenter opined that the criteria would discriminate against low-income individuals unless additional funding was provided for professionals to observe and record periods of decompensation.

Some commenters recommended retaining the prior rules, saying that they more effectively conveyed the concept of decompensation and its impact on an individual's ability to retain a job. Others suggested that we eliminate the chronological and durational tests for episodes of decompensation because the concept of ''repeated episodes'' means that the individual's decompensation is regular and recurring, which is sufficient to

make an individual unemployable. Still others suggested that we make the criteria more of a relative guide, and either move the word ''repeated'' back into the first sentence of proposed 12.00C4 or expand the criteria to permit different combinations of frequency and duration. Similarly, a commenter suggested that we provide a more complete explanation of the paragraph B4 criterion to prohibit restrictive interpretations, relax the criterion, or possibly even add other periods of time that would satisfy the criterion. It was also suggested that we incorporate a ''qualitative'' description of the criterion into proposed §§ 404.1520a(b)(2) and 416.920a(b)(2) similar to the first sentence of the introductory paragraph of proposed 12.00C.

Response: We did not adopt the comments that asked us to drop the proposed rules, but we revised the rules in response to the comments. We did not intend to tighten the severity requirements of the listings when we incorporated specific time and duration requirements in the proposed paragraph B4 and C1 criteria. We simply wanted to clarify existing regulatory policies and policy interpretations.

Part of the proposed rules were already inherent in the prior regulations, and we have been following a procedure similar to the proposed rules since shortly after we published the prior rules. The prior rules included a definition of the term ''repeated'' in former §§ 404.1520a(b)(3) and 416.920a(b)(3) (''three or more'' episodes). In procedural guidelines we issued in November 1985, we clarified that the paragraph B4 criterion would generally be fulfilled if there was documentation of ''three significant episodes of * * * decompensation, each of which is at least two weeks or longer, during the most recent adjudicative year.'' These guidelines also indicated that, ''[i]n circumstances in which the individual has more frequent but less marked (in terms of duration and effect) episodes of decompensation * * * medical judgment must be used to determine if the duration and effect are equivalent to that described above.''

We provided these guidelines because we received questions about how to apply the paragraph B4 criterion, and because the questions led us to conclude that paragraph B4 was incomplete. Contrary to what some of the commenters believed, an individual with repeated, brief episodes of exacerbation of symptoms and signs will not necessarily be unable to work. For instance, an individual with an anxiety disorder and a job considered stressful even to individuals without mental disorders might stay home from work for a day or two at a time because of symptoms of anxiety on three or four occasions during the course of a year. Even though the individual has withdrawn from the stressful situation because of an increase in symptoms, he or she clearly would not have a listing-level degree of limitation in this area. Indeed, the individual would probably be able to continue to do the job and certainly would be able to do less stressful work, assuming he or she had no other limitations. After promulgating the prior rules, we also received questions about the frequency of episodes, such as whether three episodes separated by intervals of several years could satisfy the listing criterion. That clearly was not the intent of the criterion. These kinds of examples and questions illustrated to us the need for more specificity in the listing.

In this regard, we believe that the standard of an average of three episodes in a year, or one every 4 months, lasting for 2 weeks each is reasonable for listing-level severity. If this standard is met or exceeded, it will establish that the paragraph B4 or C1 criteria are satisfied. Even if not met, it still serves as a measure of listing-level severity against which other combinations of frequency and duration of episodes may be judged on an individual basis. This standard is intentionally set at a high level of severity to correspond to the ''marked'' degree of limitation required by the other three paragraph B criteria. It also permits us to confidently include at the listing level all individuals who manifest the criteria, regardless of the nature and severity of the stressors that cause their episodes of decompensation or the particular responses (*e.g.*, withdrawal from the situation or hospitalization).

Because the proposed rules and these final rules reflect procedures we have been following for more than 14 years, we have significant experience with the approach. We believe that this approach has not caused the problems predicted by the commenters, will not result in our denying more claims, and is not a ''tightening'' of the listings.

Furthermore, although some individuals may satisfy the paragraph B4 criterion and at least one other paragraph B criterion, not every individual will. For instance, one cannot assume that all individuals who withdraw from a stressful situation to avoid exacerbating their symptoms for a total of only 6 weeks in the course of a year have listing-level impairments; some may not be disabled at all.

Finally, the criterion is consistent with the guidance in the third paragraph of proposed 12.00D (final 12.00D2). Rather, the criterion describes a special situation in which an individual's functioning varies considerably over time. An individual whose functioning is markedly limited more or less continuously when viewed on a longitudinal basis (that is, despite temporary variations in the level of functioning) would be evaluated under the first three of the paragraph B criteria. We intended the fourth criterion to evaluate the impairments of individuals who may function relatively well for relatively long periods between episodes of decompensation.

Nevertheless, after we reviewed the comments on our proposed changes to the paragraph B4 and C1 criteria, we realized that we could have made the proposed rules more comprehensive. Therefore, we made several changes. We replaced the lengthy and repetitive proposed paragraph B4 and C1 criteria in each listing with the term, ''repeated episodes of decompensation, each of extended duration.'' We also added a definition of the term to the second paragraph of final 12.00C4. We define the term, using the proposed paragraph B4 and C1 criteria, as ''an average of three episodes within 1 year, or once every 4 months, each lasting for at least 2 weeks.'' However, we go on to elaborate that judgment must be exercised to determine if episodes of differing frequency and duration are comparable in duration and effect to the stated criteria and may be substituted for the listed finding in a determination of equivalence. This expanded discussion provides for the assessment of individuals who have shorter but more frequent episodes, or less frequent but longer episodes. We added this discussion because it would not be feasible to specify every possible combination of frequency and duration of episodes, the level of stressors needed to cause exacerbations of an individual's symptoms or signs, and the severity of the individual's response. Thus, cases not satisfying the specific definition in 12.00C4 must be evaluated on an individualized basis using the principle of equivalence.

In the final rules, we do not specify that the three episodes must have occurred during the year prior to adjudication. We now believe that to do so would impose an artificial requirement that would be based on the eventual date of adjudication, not the true course of the impairment. It could also cause unnecessarily complex decisions when individuals with adverse determinations appeal, because

there will be more than one date of adjudication in such cases. In addition, it would have made decisions on closed periods of disability more difficult to make.

Unlike our prior regulations, we also do not state that there should be three ''or more'' episodes of decompensation. Since three episodes are sufficient to establish that the listing criterion is satisfied, it naturally follows that more than three episodes would also satisfy the criterion. More importantly, we want to convey the idea that more frequent episodes of decompensation may establish or even exceed listing-level severity, even without satisfying the 2-week duration requirement.

The new second sentence of the first paragraph of final 12.00C4 (described in an earlier comment and response) is also intended to respond in part to those commenters who were concerned about the documentation requirements for the paragraph B4 and C1 criteria, and the commenter who stated that we had not adequately described the qualitative aspects of these criteria. The sentence explains that episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation, or both. Other provisions in the final rules, already described, stress the need to consider all of the evidence in the record.

Documenting the precise beginning and ending dates of each episode of decompensation is generally unnecessary. As a practical matter, sufficient information about these dates can be inferred from medical records that show significant alterations in medication or the need for other increased treatment, from treating sources statements, or from other documentation, including from family and other sources who know the individual, that shows the need for a more structured psychological support system. We believe that the changes in the final rules, together with our ongoing outreach activities, will assist individuals with mental impairments to obtain benefits if they are eligible for them, regardless of their economic status or the extent of their psychosocial support systems.

Comment: One commenter questioned whether there would be any change in the way the paragraph B4 criterion is documented under the revised rules because the proposed paragraph B4 and C1 criteria were identical. The commenter noted that our operating guidelines for the prior rules indicated that the paragraph C1 criterion could be documented either in the same manner as the paragraph B4 criterion (i.e., with evidence substantiating the occurrence of the required episodes of decompensation) or with evidence showing that the disorder had ''resulted in such marginal adjustment that any increase in mental demands or change in the environment would be predicted to cause'' episodes of decompensation.

Response: We responded to the comment by expanding the paragraph C rules. The paragraph C criteria differ conceptually from the paragraph B criteria. The paragraph C criteria describe chronic mental disorders, i.e., disorders that have lasted for at least 2 years, in which there may be periods of remission of the individual's symptoms due to the effects of medication or psychosocial support with little or no improvement in the individual's capacity to function independently on a sustained basis. Individuals with such chronic mental disorders may experience a progressive change in mental functioning with each episode of deterioration or decompensation. This difference is reflected in the introductory statement of the paragraph C criteria, which requires the presence of a chronic mental disorder of at least 2 years' duration that has caused more than a minimal limitation in the ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support.

The paragraph B4 criterion assesses the significance of actual episodes of decompensation. A mental disorder need not be chronic to satisfy this criterion. However, there must be repeated exacerbations in the symptoms or signs, during which there is a loss of adaptive functioning. This loss of adaptive functioning is reflected by functional limitations in the areas described by the paragraph B1, B2, or B3 criteria, which individually need not satisfy the listing-level severity requirements.

We did not change the documentation requirements for the paragraph B4 criterion under the final rules. Such documentation will continue to be derived from the longitudinal history of the disorder. As a result of this comment, however, we added another criterion to paragraph C of final listings 12.02, 12.03, and 12.04. This criterion, the final paragraph C2 criterion, specifically covers the situation described in our existing operating instructions: Individuals with chronic mental disorders who may not experience episodes of decompensation because their symptoms and signs are attenuated by medical treatment or psychosocial support, but whose adjustment is so marginal that any increased stress would be predicted to result in such episodes.

In making this addition, we retained the paragraph C1 criterion. The paragraph C1 criterion is now reserved for individuals with chronic mental disorders who continue to experience repeated episodes of decompensation, even though their symptoms and signs may currently be attenuated by treatment. We also redesignated the proposed paragraph C2 criterion as the final paragraph C3 criterion. This criterion covers individuals whose chronic mental disorders have resulted in an inability to function outside a highly supportive living arrangement for at least 1 year with an indication of continued need for such an arrangement.

Comment: Many commenters favored our proposal to add paragraph C criteria to listings 12.02 (Organic mental disorders) and 12.04 (Affective disorders). Other commenters urged us to add these criteria to all of the mental disorders listings that contain paragraph B criteria; one commenter singled out listing 12.09 (Substance addiction disorders). These commenters maintained that our logic for extending the criteria to listings 12.02 and 12.04, i.e., to ''facilitate the evaluation process for individuals with chronic disorders in these categories'' (56 FR at 33131), also applies to the other listings because any mental disorder has the potential for being long-term.

Response: We did not adopt the comments. We agree that the disorders covered by listings 12.07 (Somatoform disorders), 12.08 (Personality disorders), and 12.09 can become chronic, but they generally do not present the same clinical picture as chronic disorders covered by listings with paragraph C criteria. Therefore, the disorders under these listings would probably not meet the paragraph C criteria, and we believe that adding such criteria to final listings 12.07, 12.08, and 12.09 is unnecessary. We also believe that including paragraph C criteria in listing 12.10 is unnecessary. Manifestations of autistic and other pervasive developmental disorders are almost always lifelong, and chronicity is generally not an issue. In the rare event that a disorder covered by listing 12.07, 12.08, 12.09, or 12.10 does not satisfy the paragraph B criteria but presents functional limitations of the severity described by the paragraph C criteria of the other listings, we can make a determination of medical equivalence.

Comment: Two commenters presented differing views on the requirements of the criteria in proposed paragraph C of listings 12.02, 12.03, and

12.04. One of the commenters questioned the need for the paragraph C1 criterion and suggested that we make the paragraph C2 criterion a stand-alone criterion. This commenter said that any impairment(s) that satisfies the introductory statement of the paragraph C criteria (by virtue of a 2-year history of an interference ''with basic work activity'') and the paragraph C1 criterion (resulting in repeated episodes of decompensation) would also satisfy the paragraph B3 and B4 criteria. Therefore, the commenter considered the paragraph C1 criterion superfluous because the fifth sentence of the first paragraph of 12.00A requires us to assess the mental impairment(s) under the paragraph B criteria before we apply the paragraph C criteria. In addition, the commenter stated that the paragraph C2 criterion need not be linked to the introductory paragraph, as the criterion's requirement for a ''[c]urrent history of 1 or more years' inability to function outside a highly supportive living arrangement with an indication of continued need for such arrangement'' is, by itself, a sufficient predictor of inability to work.

The other commenter commended us for our proposal to change the time requirement in the paragraph C2 criterion from 2 years to 1 year. The commenter believed that 1 year's duration for a highly supportive living arrangement together with an indication for its continued need is sufficient to demonstrate an inability to work.

Response: We believe there is a continued need for the paragraph C1 criterion. As we have already noted, the paragraph C1 criterion consists of two parts: An introductory statement requiring a medically documented history of a chronic mental disorder ''of at least 2 years'' duration that has caused more than a minimal limitation of ability to do any basic work activity, with symptoms or signs currently attenuated by medication or psychosocial support''; and a paragraph requiring repeated episodes of decompensation. Thus, while an individual satisfying the paragraph C1 criterion will also satisfy the paragraph B4 criterion, the paragraph B3 criterion's requirement for ''marked difficulties in completing tasks in a timely manner'' may not be satisfied.

Also, we do not agree that the proposed paragraph C2 criterion (the final paragraph C3 criterion) should be a stand-alone criterion, separate from the introductory paragraph. We include the 2-year requirement in the introductory paragraph of the paragraph C criteria because the alternative functional criteria are used to facilitate the evaluation of claims of individuals who, at the time of adjudication, already have chronic mental disorders. In such individuals, the more obvious symptoms of their chronic mental disorders may be lessened or attenuated by medication or psychosocial support, but the individuals remain disabled because the symptoms and signs of their impairments will return when they encounter stressful circumstances or leave their supportive or supervised environments. The 2-year time requirement in the introductory paragraph is taken from the DSM–III–R's definition of a chronic mental disorder. We will evaluate individuals who do not have chronic mental disorders under the paragraph B criteria.

We appreciate the favorable comment concerning our proposed modification to the prior paragraph C2 criterion. We proposed this change to better reflect the original intent of this criterion, which describes chronic mental disorders that have resulted in the need for structured environments to minimize stress and reduce overt symptomatology. We believe that a chronic mental disorder that has lasted at least 2 years and that results in a current history of inability to function outside a highly supportive environment for at least 1 year, with an indication of the continued need for such an arrangement, satisfies our definition of disability.

12.05 Mental Retardation

Comment: One commenter viewed the second paragraph of proposed listing 12.05 as requiring evidence of intelligence testing prior to age 18. The commenter offered several arguments why this would be difficult for adults to establish and why it would be preferable to use more recent information.

Response: We adopted the comment. We did not intend the second paragraph of proposed listing 12.05 to require intelligence testing (or other contemporary evidence) prior to age 18, but we believe that the proposed listing could be misinterpreted, even though it was the same as in the prior rules. The proposed listing, as in the prior rules, stated that the significantly subaverage general intellectual functioning with deficits in adaptive behavior must have been initially ''manifested'' during the developmental period. We have always interpreted this word to include the common clinical practice of inferring a diagnosis of mental retardation when the longitudinal history and evidence of current functioning demonstrate that the impairment existed before the end of the developmental period. Nevertheless, we also can see that the rule was ambiguous. Therefore, we expanded the phrase setting out the age limit to read: ''i.e., the evidence demonstrates or supports onset of the impairment before age 22.''

Comment: One commenter objected to our proposed insertion of the word ''an'' before ''additional and significant work-related limitation of function'' in proposed listing 12.05C and urged us to remove the word. The inclusion of the word ''an,'' the commenter said, ''could be read to mean that there must be at least one additional factor which in itself imposes significant work-related limitation of function''; prior listing 12.05C could ''be read to include additional limitations caused by a number of factors, some of which might not be significant standing alone.''

Response: We did not adopt the comment. We inserted the word ''an'' in listing 12.05C to clarify this rule. We always have intended that there be a separate physical or mental impairment apart from the claimant's mental retardation that imposes an additional and significant work-related limitation of function.

In addition, the comment made us realize that the phrase ''significant work-related limitation of function'' might not be clear. We always have intended the phrase to mean that the other impairment is a ''severe'' impairment, as defined in §§ 404.1520(c) and 416.920(c). We have explained this policy previously in our training manuals, in Social Security Ruling 98–1p, and in Social Security Acquiescence Ruling (AR) 98–2(8). Therefore, in response to this comment, we revised the fourth paragraph of final 12.00A, which explains how we assess the functional limitations of an additional impairment under listing 12.05C. The revised paragraph states that we will assess the degree of functional limitation the additional impairment imposes to determine if it significantly limits an individual's physical or mental ability to do basic work activities; ''*i.e.,* is a 'severe' impairment(s), as defined in §§ 404.1520(c) and 416.920(c).''

Sections 404.1520(c) and 416.920(c) note that we must base our assessment of whether an impairment is severe on the limitations that the impairment imposes on the individual's physical and mental abilities to do basic work activities. When we do this, we do not consider factors such as the individual's age, education, or past work experience. Thus, although the other impairment in listing 12.05C may not prevent the individual from doing his or her past work, it may still cause an ''additional

and significant work-related limitation of function.'' Conversely, if the other impairment prevents the individual from doing his or her past work because of the unique features of that work, but does not significantly limit the individual's ability to do basic work activities, we will find that the impairment does not satisfy the ''additional and significant work-related limitation of function'' requirement in listing 12.05C.

We make this point because the term ''significant work-related limitation of function'' was an issue in *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985) and *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990). We issued an acquiescence ruling, AR 92–3(4) (57 FR 8463), partially replaced by AR 93–1(4) (58 FR 25996), to explain our policies and how we would apply the holdings of the United States Court of Appeals for the Fourth Circuit in these cases. Similarly, as a result of *Sird* v. *Chater*, 105 F.3d 401 (8th Cir. 1997), which also addressed this issue, we issued an acquiescence ruling, AR 98–2(8) (63 FR 9279), to explain our policies and how we would apply the holding of the United States Court of Appeals for the Eighth Circuit in this case. We believe that these final rules sufficiently clarify the regulations at issue in the Fourth Circuit holdings in *Branham* and *Flowers*, and the Eighth Circuit holding in *Sird*, discussed above. Therefore, we are rescinding AR 92–3(4), AR 93–1(4), and AR 98–2(8) under the authority of 20 CFR 404.985(e)(4) and 416.1485(e)(4) concurrently with the effective date of these regulations.

Comment: One commenter questioned the applicability of paragraphs D4 and E4 in proposed listing 12.05. The commenter expressed concern that these paragraphs, which are identical to the paragraph B4 criterion for episodes of decompensation in the other listings, are not applicable to individuals with the impairments described in listing 12.05. The commenter pointed out that there is no reference to decompensation in the DSM–III–R's discussion of these disorders and that the term ''decompensation'' does not really apply to these disorders.

Response: We did not adopt the comment. The criteria in paragraph D4 of final listing 12.05 and paragraph B4 of final listing 12.10 take into account behavioral manifestations that could occur in individuals who have mental retardation or autistic disorder or other pervasive developmental disorders under our definition of ''decompensation'' in final 12.00C4. Individuals with these disorders usually have their lives structured to minimize stressful circumstances. When there are disruptions in their environments, their level of adaptive functioning may temporarily worsen. Moreover, even if the criterion will rarely apply to such individuals, retaining it only provides another method by which such individuals can establish that their impairments ''meet'' the listing. Retaining it also maintains consistency among all of the listings that include ''paragraph B'' criteria.

Comment: One commenter thought that proposed listing 12.05E, for autistic disorder and other pervasive developmental disorders, was ambiguous. The commenter said that the difference between it and listing 12.05A was not readily apparent.

Response: We accommodated this comment by deleting proposed listing 12.05E from the final rules and establishing a new listing 12.10, ''Autistic disorder and other pervasive developmental disorders.'' Final listing 12.05 is now for mental retardation only. When we originally included autism in listing 12.05, August 28, 1985 (50 FR 35050), our rationale was that both mental retardation and autism ''are developmental disabilities and the vast majority of autistic people have subnormal scores on intelligence testing.'' We included wording in the 1985 publication of listing 12.05D ''to address autistic individuals who do not have reduced IQ's.'' This wording caused some confusion, which we attempted to redress through a technical revision to listing 12.05D when we published the revised childhood mental disorders listings on December 12, 1990 (55 FR 51230). We further attempted to clarify the distinction in the proposed listings 12.05D and E. However, the comment indicates this still did not resolve the issue.

As a result, we decided to establish separate listings for these disorders consistent with the structure of the childhood mental disorders listings. Final listings 12.05 and 12.10 parallel listings 112.05 and 112.10 and therefore also further our efforts to maintain consistency between the adult and childhood mental disorders listings. Although many individuals diagnosed with autistic disorder or other pervasive developmental disorders may have an associated diagnosis of mental retardation, establishing separate listings for these disorders in the adult mental disorders listings, as in the childhood mental disorders listings, will eliminate the ambiguity of proposed listing 12.05 and more easily allow for individualized assessments of such cases.

We also modified the two introductory paragraphs of listing 12.05, as well as the fourth paragraph of 12.00A, to reflect the fact that final listing 12.05 contains only the diagnostic category of mental retardation.

Other Comments

General Comments

Comment: We received many favorable comments on the proposed rules. Some of the commenters identified specific aspects of the proposals that they endorsed as improvements. Other commenters, without naming specific portions of the proposals, stated that the proposals would clarify and improve the adjudicative process.

Response: The endorsement of general or specific aspects of the proposals was very useful in the development of the final rules. These comments, coupled with the constructive recommendations received from other commenters, helped us determine the nature and scope of the changes that we needed to make to the proposed rules.

Extend the Comment Period

Comment: One commenter requested that we extend the time period for commenting on the NPRM for an additional 2 months. The commenter was concerned that people would be deterred from commenting on the proposals because we published them during the summer, when most vacations take place, and we provided only a 60-day comment period.

Response: We usually provide 60-day comment periods on our proposed rules. Experience has shown that this is generally a sufficient period of time to afford people the opportunity to comment on proposed rules, even rules published during the summer. Moreover, in light of the fact that we received over 100 separate letters, it was apparent that the public was aware of the NPRM. Thus, we did not extend the 60-day comment period.

Multiple Personality Disorder

Comment: One commenter asked us to include a separate listing category for multiple personality disorder because it is a dissociative, rather than a personality, disorder and there were no criteria for it in the proposed listings. The commenter noted that this disorder is more common than once thought. Based on personal experience, the commenter believed it is at least as common as severe tic disorders.

Response: We did not adopt the comment. As we have stated above, the

adult mental disorders listings are not intended to be all-inclusive, but are designed to provide examples of some of the most common major mental disorders. This does not mean that an individual with an unlisted mental impairment(s) cannot be evaluated using these listing criteria. Such an individual may be found disabled if his or her impairment(s) is found to be medically equivalent in severity to a listed impairment. Disability may also be found at subsequent steps of the sequential evaluation process.

Workload, Staffing, and Training

Comment: One commenter believed the proposed rules would increase workloads and require either increased staffing or result in decreased productivity. The commenter said that State agencies will need considerable lead time to develop and provide training to disability examiners and medical consultants. The commenter also said that we, in conjunction with the State agencies, will need to develop materials to inform the medical community, the public, and advocacy groups about these changes.

Response: We do not believe that the final rules will cause increased workloads or necessitate increased staffing. The final rules contain relatively few major changes and should be easier to use because they include more guidelines than the prior rules and are clearer and simpler. Therefore, they should not impact adversely on decisionmakers. We believe the improvements in the revised rules will quickly offset any temporary decline in productivity that might occur as adjudicators become familiar with them.

With any regulatory change, we consider whether there is a need for training and public information. We have already developed, with assistance from some State agencies, training and public information materials to accompany these final rules. We do not believe, however, that the relatively few major changes contained in these rules require the kind of training and outreach suggested by the commenter.

Research

Comment: One commenter suggested that we engage in new research endeavors to provide a wider empirical base from which we can draw for policy and programmatic decisions. The commenter recommended several possible studies.

Response: We will consider the suggestions made by the commenter as we develop future research proposals.

Electronic Versions

The electronic file of this document is available on the internet at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the internet site for SSA (i.e., ''SSA Online'') at *http://www.ssa.gov/.*

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these final in accordance with Executive Order (E.O.) 12866.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals' eligibility for program benefits under the Act. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no new reporting or recordkeeping requirements requiring clearance by the Office of Management and Budget (OMB). SSA has OMB clearance to collect information in claims evaluated under part A of the Listings, using form SSA–2506–BK, Psychiatric Review Technique (OMB No. 0960–0413). Organizations or individuals desiring to submit comments on this information collection requirement should direct them to the Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, Attention: Reports Clearance Officer, 1–A–21 Operations Building, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for SSA.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 5, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

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

Subpart P—Determining Disability and Blindness

1. The authority citation for subpart P of part 404 continues to read as follows:

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

2. Section 404.1520a is revised to read as follows:

§ 404.1520a Evaluation of mental impairments.

(a) *General.* The steps outlined in § 404.1520 apply to the evaluation of physical and mental impairments. In addition, when we evaluate the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when Part A of the Listing of Impairments is used, we must follow a special technique at each level in the administrative review process. We describe this special technique in paragraphs (b) through (e) of this section. Using the technique helps us:

(1) Identify the need for additional evidence to determine impairment severity;

(2) Consider and evaluate functional consequences of the mental disorder(s) relevant to your ability to work; and

(3) Organize and present our findings in a clear, concise, and consistent manner.

(b) *Use of the technique.* (1) Under the special technique, we must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether you have a medically determinable mental impairment(s). See § 404.1508 for more information about what is needed to show a medically determinable impairment. If we determine that you have a medically determinable mental impairment(s), we must specify the symptoms, signs, and laboratory findings that substantiate the presence of the impairment(s) and document our

findings in accordance with paragraph (e) of this section.

(2) We must then rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c) of this section and record our findings as set out in paragraph (e) of this section.

(c) *Rating the degree of functional limitation.* (1) Assessment of functional limitations is a complex and highly individualized process that requires us to consider multiple issues and all relevant evidence to obtain a longitudinal picture of your overall degree of functional limitation. We will consider all relevant and available clinical signs and laboratory findings, the effects of your symptoms, and how your functioning may be affected by factors including, but not limited to, chronic mental disorders, structured settings, medication, and other treatment.

(2) We will rate the degree of your functional limitation based on the extent to which your impairment(s) interferes with your ability to function independently, appropriately, effectively, and on a sustained basis. Thus, we will consider such factors as the quality and level of your overall functional performance, any episodic limitations, the amount of supervision or assistance you require, and the settings in which you are able to function. See 12.00C through 12.00H of the Listing of Impairments in appendix 1 to this subpart for more information about the factors we consider when we rate the degree of your functional limitation.

(3) We have identified four broad functional areas in which we will rate the degree of your functional limitation: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. See 12.00C of the Listing of Impairments.

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: None, one or two, three, four or more. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity.

(d) *Use of the technique to evaluate mental impairments.* After we rate the degree of functional limitation resulting from your impairment(s), we will determine the severity of your mental impairment(s).

(1) If we rate the degree of your limitation in the first three functional areas as ''none'' or ''mild'' and ''none'' in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do basic work activities (see § 404.1521).

(2) If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the medical findings about your impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). See paragraph (e) of this section.

(3) If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity.

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. The disability examiner, a member of the adjudicative team (see § 404.1615), may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, the written decision issued by the administrative law judge or Appeals Council must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 404.941, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

3. Section 404.1528 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 404.1528 Symptoms, signs, and laboratory findings.

* * * * *

(b) * * * Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. * * *

* * * * *

4. Part A of appendix 1 to subpart P is amended as follows:

a. The introductory text of 5.00, Digestive System, is amended by removing the last sentence of paragraph B.

b. The introductory text of 11.00, Neurological, is amended by adding a new paragraph F immediately before listing 11.01.

c. The introductory text of 12.00, Mental Disorders, including paragraphs A through I, is revised.

d. Listing 12.02 is amended by revising the second introductory paragraph and paragraphs B3 and B4, and adding a new paragraph C.

e. Listing 12.03 is amended by revising paragraphs B3, B4, and C.

f. Listing 12.04 is amended by revising the second introductory paragraph and paragraphs B3 and B4, and adding a new paragraph C.

g. Listing 12.05 is amended by revising the first paragraph, paragraph C, paragraph D introductory text, and paragraphs D3 and D4.

h. Listing 12.06 is amended by revising paragraphs B3 and B4.

i. Listing 12.07 is amended by revising paragraph B introductory text, and paragraphs B3 and B4.

j. Listing 12.08 is amended by revising paragraph B introductory text, and paragraphs B3 and B4.

k. Listing 12.10 is added.

The revisions and additions read as follows:

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

* * * * *

Part A

* * * * *

11.00 Neurological

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F. *Traumatic brain injury (TBI).* The guidelines for evaluating impairments caused by cerebral trauma are contained in 11.18. Listing 11.18 states that cerebral trauma is to be evaluated under 11.02, 11.03, 11.04, and 12.02, as applicable.

TBI may result in neurological and mental impairments with a wide variety of posttraumatic symptoms and signs. The rate and extent of recovery can be highly variable and the long-term outcome may be difficult to predict in the first few months post-injury. Generally, the neurological impairment(s) will stabilize more rapidly than any mental impairment(s). Sometimes a mental impairment may appear to improve immediately following TBI and then worsen, or, conversely, it may appear much worse initially but improve after a few months. Therefore, the mental findings immediately following TBI may not reflect the actual severity of your mental impairment(s). The actual severity of a mental impairment may not become apparent until 6 months post-injury.

In some cases, evidence of a profound neurological impairment is sufficient to permit a finding of disability within 3 months post-injury. If a finding of disability within 3 months post-injury is not possible based on any neurological impairment(s), we will defer adjudication of the claim until we obtain evidence of your neurological or mental impairments at least 3 months post-injury. If a finding of disability still is not possible at that time, we will again defer adjudication of the claim until we obtain evidence at least 6 months post-injury. At that time, we will fully evaluate any neurological and mental impairments and adjudicate the claim.

* * * * *

12.00 Mental Disorders

A. *Introduction.* The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on your ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in nine diagnostic categories: Organic mental disorders (12.02); schizophrenic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); mental retardation (12.05); anxiety-related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); substance addiction disorders (12.09); and autistic disorder and other pervasive developmental disorders (12.10). Each listing, except 12.05 and 12.09, consists of a statement describing the disorder(s) addressed by the listing, paragraph A criteria (a set of medical findings), and paragraph B criteria (a set of impairment-related functional limitations). There are additional functional criteria (paragraph C criteria) in 12.02, 12.03, 12.04, and 12.06, discussed herein. We will assess the paragraph B criteria before we apply the paragraph C criteria. We will assess the paragraph C criteria only if we find that the paragraph B criteria are not satisfied. We will find that you have a listed impairment if the diagnostic description in the introductory paragraph and the criteria of both paragraphs A and B (or A and C, when appropriate) of the listed impairment are satisfied.

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings. However, we may also consider mental impairments under physical body system listings, using the concept of medical equivalence, when the mental disorder results in physical dysfunction. (See, for instance, 12.00D12 regarding the evaluation of anorexia nervosa and other eating disorders.)

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the diagnostic description, that is manifested by the medical findings in paragraph A.

The structure of the listing for mental retardation (12.05) is different from that of the other mental disorders listings. Listing 12.05 contains an introductory paragraph with the diagnostic description for mental retardation. It also contains four sets of criteria (paragraphs A through D). If your impairment satisfies the diagnostic description in the introductory paragraph and any one of the four sets of criteria, we will find that your impairment meets the listing. Paragraphs A and B contain criteria that describe disorders we consider severe enough to prevent your doing any gainful activity without any additional assessment of functional limitations. For paragraph C, we will assess the degree of functional limitation the additional impairment(s) imposes to determine if it significantly limits your physical or mental ability to do basic work activities, *i.e.,* is a ''severe'' impairment(s), as defined in §§ 404.1520(c) and 416.920(c). If the additional impairment(s) does not cause limitations that are ''severe'' as defined in §§ 404.1520(c) and 416.920(c), we will not find that the additional impairment(s) imposes ''an additional and significant work-related limitation of function,'' even if you are unable to do your past work because of the unique features of that work. Paragraph D contains the same functional criteria that are required under paragraph B of the other mental disorders listings.

The structure of the listing for substance addiction disorders, 12.09, is also different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings are so constructed that an individual with an impairment(s) that meets or is equivalent in severity to the criteria of a listing could not reasonably be expected to do any gainful activity. These listings are only examples of common mental disorders that are considered severe enough to prevent an individual from doing any gainful activity. When you have a medically determinable severe mental impairment that does not satisfy the diagnostic description or the requirements of the paragraph A criteria of the relevant listing, the assessment of the paragraph B and C criteria is critical to a determination of equivalence.

If your impairment(s) does not meet or is not equivalent in severity to the criteria of any listing, you may or may not have the residual functional capacity (RFC) to do substantial gainful activity (SGA). The determination of mental RFC is crucial to the evaluation of your capacity to do SGA when your impairment(s) does not meet or equal the criteria of the listings, but is nevertheless severe.

RFC is a multidimensional description of the work-related abilities you retain in spite of your medical impairments. An assessment of your RFC complements the functional evaluation necessary for paragraphs B and C of the listings by requiring consideration of an expanded list of work-related capacities that may be affected by mental disorders when your impairment(s) is severe but neither meets nor is equivalent in severity to a listed mental disorder.

B. *Need for medical evidence.* We must establish the existence of a medically determinable impairment(s) of the required duration by medical evidence consisting of

symptoms, signs, and laboratory findings (including psychological test findings). Symptoms are your own description of your physical or mental impairment(s). Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, *e.g.,* abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder.

C. *Assessment of severity.* We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. Where we use ''marked'' as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis. See §§ 404.1520a and 416.920a.

1. *Activities of daily living* include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office. In the context of your overall situation, we assess the quality of these activities by their independence, appropriateness, effectiveness, and sustainability. We will determine the extent to which you are capable of initiating and participating in activities independent of supervision or direction.

We do not define ''marked'' by a specific number of different activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions.

2. *Social functioning* refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (*e.g.*, supervisors), or cooperative behaviors involving coworkers.

We do not define ''marked'' by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative, or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts.

3. *Concentration, persistence, or pace* refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence.

On mental status examinations, concentration is assessed by tasks such as having you subtract serial sevens or serial threes from 100. In psychological tests of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits.

In work evaluations, concentration, persistence, or pace is assessed by testing your ability to sustain work using appropriate production standards, in either real or simulated work tasks (*e.g.*, filing index cards, locating telephone numbers, or disassembling and reassembling objects). Strengths and weaknesses in areas of concentration and attention can be discussed in terms of your ability to work at a consistent pace for acceptable periods of time and until a task is completed, and your ability to repeat sequences of action to achieve a goal or an objective.

We must exercise great care in reaching conclusions about your ability or inability to complete tasks under the stresses of employment during a normal workday or work week based on a time-limited mental status examination or psychological testing by a clinician, or based on your ability to complete tasks in other settings that are less demanding, highly structured, or more supportive. We must assess your ability to complete tasks by evaluating all the evidence, with an emphasis on how independently, appropriately, and effectively you are able to complete tasks on a sustained basis.

We do not define ''marked'' by a specific number of tasks that you are unable to complete, but by the nature and overall degree of interference with function. You may be able to sustain attention and persist at simple tasks but may still have difficulty with complicated tasks. Deficiencies that are apparent only in performing complex procedures or tasks would not satisfy the intent of this paragraph B criterion. However, if you can complete many simple tasks, we may nevertheless find that you have a marked limitation in concentration, persistence, or pace if you cannot complete these tasks without extra supervision or assistance, or in accordance with quality and accuracy standards, or at a consistent pace without an unreasonable number and length of rest periods, or without undue interruptions or distractions.

4. *Episodes of decompensation* are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (*e.g.*, hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode.

The term *repeated episodes of decompensation, each of extended duration* in these listings means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks. If you have experienced more frequent episodes of shorter duration or less frequent episodes of longer duration, we must use judgment to determine if the duration and functional effects of the episodes are of equal severity and may be used to substitute for the listed finding in a determination of equivalence.

D. *Documentation.* The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). See §§ 404.1512 and 416.912 for a discussion of what we mean by ''evidence'' and how we will assist you in developing your claim. Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information you provide from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record.

1. *Sources of evidence.*

a. *Medical evidence.* There must be evidence from an acceptable medical source showing that you have a medically determinable mental impairment. See

§§ 404.1508, 404.1513, 416.908, and 416.913. We will make every reasonable effort to obtain all relevant and available medical evidence about your mental impairment(s), including its history, and any records of mental status examinations, psychological testing, and hospitalizations and treatment. Whenever possible, and appropriate, medical source evidence should reflect the medical source's considerations of information from you and other concerned persons who are aware of your activities of daily living; social functioning; concentration, persistence, or pace; or episodes of decompensation. Also, in accordance with standard clinical practice, any medical source assessment of your mental functioning should take into account any sensory, motor, or communication abnormalities, as well as your cultural and ethnic background.

b. *Information from the individual.* Individuals with mental impairments can often provide accurate descriptions of their limitations. The presence of a mental impairment does not automatically rule you out as a reliable source of information about your own functional limitations. When you have a mental impairment and are willing and able to describe your limitations, we will try to obtain such information from you. However, you may not be willing or able to fully or accurately describe the limitations resulting from your impairment(s). Thus, we will carefully examine the statements you provide to determine if they are consistent with the information about, or general pattern of, the impairment as described by the medical and other evidence, and to determine whether additional information about your functioning is needed from you or other sources.

c. *Other information.* Other professional health care providers (*e.g.*, psychiatric nurse, psychiatric social worker) can normally provide valuable functional information, which should be obtained when available and needed. If necessary, information should also be obtained from nonmedical sources, such as family members and others who know you, to supplement the record of your functioning in order to establish the consistency of the medical evidence and longitudinality of impairment severity, as discussed in 12.00D2. Other sources of information about functioning include, but are not limited to, records from work evaluations and rehabilitation progress notes.

2. *Need for longitudinal evidence.* Your level of functioning may vary considerably over time. The level of your functioning at a specific time may seem relatively adequate or, conversely, rather poor. Proper evaluation of your impairment(s) must take into account any variations in the level of your functioning in arriving at a determination of severity over time. Thus, it is vital to obtain evidence from relevant sources over a sufficiently long period prior to the date of adjudication to establish your impairment severity.

3. *Work attempts.* You may have attempted to work or may actually have worked during the period of time pertinent to the determination of disability. This may have been an independent attempt at work or it may have been in conjunction with a community mental health or sheltered program, and it may have been of either short or long duration. Information concerning your behavior during any attempt to work and the circumstances surrounding termination of your work effort are particularly useful in determining your ability or inability to function in a work setting. In addition, we should also examine the degree to which you require special supports (such as those provided through supported employment or transitional employment programs) in order to work.

4. *Mental status examination.* The mental status examination is performed in the course of a clinical interview and is often partly assessed while the history is being obtained. A comprehensive mental status examination generally includes a narrative description of your appearance, behavior, and speech; thought process (*e.g.*, loosening of associations); thought content (*e.g.*, delusions); perceptual abnormalities (*e.g.*, hallucinations); mood and affect (*e.g.*, depression, mania); sensorium and cognition (*e.g.*, orientation, recall, memory, concentration, fund of information, and intelligence); and judgment and insight. The individual case facts determine the specific areas of mental status that need to be emphasized during the examination.

5. *Psychological testing.*

a. Reference to a ''standardized psychological test'' indicates the use of a psychological test measure that has appropriate validity, reliability, and norms, and is individually administered by a qualified specialist. By ''qualified,'' we mean the specialist must be currently licensed or certified in the State to administer, score, and interpret psychological tests and have the training and experience to perform the test.

b. Psychological tests are best considered as standardized sets of tasks or questions designed to elicit a range of responses. Psychological testing can also provide other useful data, such as the specialist's observations regarding your ability to sustain attention and concentration, relate appropriately to the specialist, and perform tasks independently (without prompts or reminders). Therefore, a report of test results should include both the objective data and any clinical observations.

c. The salient characteristics of a good test are: (1) Validity, *i.e.*, the test measures what it is supposed to measure; (2) reliability, *i.e.*, the consistency of results obtained over time with the same test and the same individual; (3) appropriate normative data, *i.e.*, individual test scores can be compared to test data from other individuals or groups of a similar nature, representative of that population; and (4) wide scope of measurement, *i.e.*, the test should measure a broad range of facets/aspects of the domain being assessed. In considering the validity of a test result, we should note and resolve any discrepancies between formal test results and the individual's customary behavior and daily activities.

6. *Intelligence tests.*

a. The results of standardized intelligence tests may provide data that help verify the presence of mental retardation or organic mental disorder, as well as the extent of any compromise in cognitive functioning. However, since the results of intelligence tests are only part of the overall assessment, the narrative report that accompanies the test results should comment on whether the IQ scores are considered valid and consistent with the developmental history and the degree of functional limitation.

b. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not covered under the provisions of 12.05A. Listing 12.05A may be the basis for adjudicating cases where the results of standardized intelligence tests are unavailable, *e.g.*, where your condition precludes formal standardized testing.

c. Due to such factors as differing means and standard deviations, identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. The IQ scores in 12.05 reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15; *e.g.*, the Wechsler series. IQs obtained from standardized tests that deviate from a mean of 100 and a standard deviation of 15 require conversion to a percentile rank so that we can determine the actual degree of limitation reflected by the IQ scores. In cases where more than one IQ is customarily derived from the test administered, *e.g.*, where verbal, performance, and full scale IQs are provided in the Wechsler series, we use the lowest of these in conjunction with 12.05.

d. Generally, it is preferable to use IQ measures that are wide in scope and include items that test both verbal and performance abilities. However, in special circumstances, such as the assessment of individuals with sensory, motor, or communication abnormalities, or those whose culture and background are not principally English-speaking, measures such as the Test of Nonverbal Intelligence, Third Edition (TONI–3), Leiter International Performance Scale-Revised (Leiter-R), or Peabody Picture Vocabulary Test—Third Edition (PPVT–III) may be used.

e. We may consider exceptions to formal standardized psychological testing when an individual qualified by training and experience to perform such an evaluation is not available, or in cases where appropriate standardized measures for your social, linguistic, and cultural background are not available. In these cases, the best indicator of severity is often the level of adaptive functioning and how you perform activities of daily living and social functioning.

7. *Personality measures and projective testing techniques.* Results from standardized personality measures, such as the Minnesota Multiphasic Personality Inventory-Revised (MMPI–II), or from projective types of techniques, such as the Rorschach and the Thematic Apperception Test (TAT), may provide useful data for evaluating several types of mental disorders. Such test results may be useful for disability evaluation when corroborated by other evidence, including results from other psychological tests and information obtained in the course of the clinical evaluation, from treating and other medical sources, other professional health care providers, and nonmedical sources. Any inconsistency between test results and

clinical history and observation should be explained in the narrative description.

8. *Neuropsychological assessments.* Comprehensive neuropsychological examinations may be used to establish the existence and extent of compromise of brain function, particularly in cases involving organic mental disorders. Normally, these examinations include assessment of cerebral dominance, basic sensation and perception, motor speed and coordination, attention and concentration, visual-motor function, memory across verbal and visual modalities, receptive and expressive speech, higher-order linguistic operations, problem-solving, abstraction ability, and general intelligence. In addition, there should be a clinical interview geared toward evaluating pathological features known to occur frequently in neurological disease and trauma, *e.g.*, emotional lability, abnormality of mood, impaired impulse control, passivity and apathy, or inappropriate social behavior. The specialist performing the examination may administer one of the commercially available comprehensive neuropsychological batteries, such as the Luria-Nebraska or the Halstead-Reitan, or a battery of tests selected as relevant to the suspected brain dysfunction. The specialist performing the examination must be properly trained in this area of neuroscience.

9. *Screening tests.* In conjunction with clinical examinations, sources may report the results of screening tests; *i.e.*, tests used for gross determination of level of functioning. Screening instruments may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. However, in some cases the results of screening tests may show such obvious abnormalities that further testing will clearly be unnecessary.

10. *Traumatic brain injury (TBI).* In cases involving TBI, follow the documentation and evaluation guidelines in 11.00F.

11. *Anxiety disorders.* In cases involving agoraphobia and other phobic disorders, panic disorders, and posttraumatic stress disorders, documentation of the anxiety reaction is essential. At least one detailed description of your typical reaction is required. The description should include the nature, frequency, and duration of any panic attacks or other reactions, the precipitating and exacerbating factors, and the functional effects. If the description is provided by a medical source, the reporting physician or psychologist should indicate the extent to which the description reflects his or her own observations and the source of any ancillary information. Statements of other persons who have observed you may be used for this description if professional observation is not available.

12. *Eating disorders.* In cases involving anorexia nervosa and other eating disorders, the primary manifestations may be mental or physical, depending upon the nature and extent of the disorder. When the primary functional limitation is physical, *e.g.*, when severe weight loss and associated clinical findings are the chief cause of inability to work, we may evaluate the impairment under the appropriate physical body system listing. Of course, we must also consider any mental aspects of the impairment, unless we can make a fully favorable determination or decision based on the physical impairment(s) alone.

E. *Chronic mental impairments.* Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders, you may commonly have your life structured in such a way as to minimize your stress and reduce your symptoms and signs. In such a case, you may be much more impaired for work than your symptoms and signs would indicate. The results of a single examination may not adequately describe your sustained ability to function. It is, therefore, vital that we review all pertinent information relative to your condition, especially at times of increased stress. We will attempt to obtain adequate descriptive information from all sources that have treated you in the time period relevant to the determination or decision.

F. *Effects of structured settings.* Particularly in cases involving chronic mental disorders, overt symptomatology may be controlled or attenuated by psychosocial factors such as placement in a hospital, halfway house, board and care facility, or other environment that provides similar structure. Highly structured and supportive settings may also be found in your home. Such settings may greatly reduce the mental demands placed on you. With lowered mental demands, overt symptoms and signs of the underlying mental disorder may be minimized. At the same time, however, your ability to function outside of such a structured or supportive setting may not have changed. If your symptomatology is controlled or attenuated by psychosocial factors, we must consider your ability to function outside of such highly structured settings. For these reasons, identical paragraph C criteria are included in 12.02, 12.03, and 12.04. The paragraph C criterion of 12.06 reflects the uniqueness of agoraphobia, an anxiety disorder manifested by an overwhelming fear of leaving the home.

G. *Effects of medication.* We must give attention to the effects of medication on your symptoms, signs, and ability to function. While drugs used to modify psychological functions and mental states may control certain primary manifestations of a mental disorder, *e.g.,* hallucinations, impaired attention, restlessness, or hyperactivity, such treatment may not affect all functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the use of such drugs, particular attention must be focused on the functional limitations that may persist. We will consider these functional limitations in assessing the severity of your impairment. See the paragraph C criteria in 12.02, 12.03, 12.04, and 12.06.

Drugs used in the treatment of some mental illnesses may cause drowsiness, blunted effect, or other side effects involving other body systems. We will consider such side effects when we evaluate the overall severity of your impairment. Where adverse effects of medications contribute to the impairment severity and the impairment(s) neither meets nor is equivalent in severity to any listing but is nonetheless severe, we will consider such adverse effects in the RFC assessment.

H. *Effects of treatment.* With adequate treatment some individuals with chronic mental disorders not only have their symptoms and signs ameliorated, but they also return to a level of function close to the level of function they had before they developed symptoms or signs of their mental disorders. Treatment may or may not assist in the achievement of a level of adaptation adequate to perform sustained SGA. See the paragraph C criteria in 12.02, 12.03, 12.04, and 12.06.

I. *Technique for reviewing evidence in mental disorders claims to determine the level of impairment severity.* We have developed a special technique to ensure that we obtain, consider, and properly evaluate all the evidence we need to evaluate impairment severity in claims involving mental impairment(s). We explain this technique in §§ 404.1520a and 416.920a.

12.01 Category of Impairments, Mental

*12.02 Organic Mental Disorders: * * **

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

*12.03 Schizophrenic, Paranoid and Other Psychotic Disorders: * * **

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work

activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

12.04 *Affective Disorders:* * * *

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

12.05 *Mental retardation:* Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

* * * * *

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

* * * * *

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

* * * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

12.06 *Anxiety-Related Disorders:* * * *

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

* * * * *

12.07 *Somatoform Disorders:* * * *

* * * * *

B. Resulting in at least two of the following:

* * * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

12.08 *Personality Disorders:* * * *

* * * * *

B. Resulting in at least two of the following:

* * * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

* * * * *

12.10 *Autistic disorder and other pervasive developmental disorders:* Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

a. Qualitative deficits in reciprocal social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and

c. Markedly restricted repertoire of activities and interests;

OR

2. For other pervasive developmental disorders, both of the following:

a. Qualitative deficits in reciprocal social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

5. Part B of appendix 1 to subpart P is amended as follows:

a. The introductory text of 112.00, Mental Disorders, is amended as follows:

i. By revising the second sentence of the third undesignated paragraph of 112.00A, the seventh undesignated paragraph of 112.00A, the eighth undesignated paragraph of 112.00A, and the third sentence of 112.00B;

ii. By adding a new paragraph between the second and third undesignated paragraphs in 112.00C;

iii. By revising the third sentence of the first paragraph of 112.00C1b;

iv. By revising 112.00D; and

v. By revising the second and third sentences of the first undesignated paragraph of 112.00F.

b. Listing 112.02 is amended by revising paragraph B2d.

c. Listing 112.05 is amended by revising paragraphs D and F.

d. Listing 112.10 is amended by revising paragraphs A2 and A2a.

The revised text is set forth as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

Part B

112.00 Mental Disorders

A. * * *

* * * * *

* * * This is followed (except in listings 112.05 and 112.12) by paragraph A criteria (a set of medical findings) and paragraph B criteria (a set of impairment-related functional limitations). * * *

* * * * *

We did not include separate C criteria for listings 112.02, 112.03, 112.04, and 112.06, as are found in the adult listings, because for the most part we do not believe that the residual disease processes described by these listings are commonly found in children. However, in unusual cases where these disorders are found in children and are comparable to the severity and duration found in adults, we may use the adult listings 12.02C, 12.03C, 12.04C, and 12.06C criteria to evaluate such cases.

The structure of the listings for Mental Retardation (112.05) and Developmental and Emotional Disorders of Newborn and Younger Infants (112.12) is different from that of the other mental disorders. Listing 112.05 (Mental Retardation) contains six sets of criteria. If an impairment satisfies the diagnostic description in the introductory paragraph and any one of the six sets of criteria, we will find that the child's impairment meets the listing. For listings 112.05D and 112.05F, we will assess the degree of functional limitation the additional impairment(s) imposes to determine if it causes more than minimal functional limitations, *i.e.,* is a ''severe'' impairment(s), as defined in § 416.924(c). If the additional impairment(s) does not cause limitations that are ''severe'' as defined in § 416.924(c), we will not find that the additional impairment(s) imposes an additional and significant limitation of function. Listing 112.12 (Developmental and Emotional Disorders of Newborn and Younger Infants) contains five criteria, any one of which, if satisfied, will result in a finding that the infant's impairment meets the listing.

* * * * *

B. * * * Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought,

memory, orientation, development, or perception, as described by an appropriate medical source. * * *

C. * * *

* * * * *

Generally, when we assess the degree of developmental delay imposed by a mental impairment, we will use an infant's or toddler's chronological age; *i.e.,* the child's age based on birth date. If the infant or toddler was born prematurely, however, we will follow the rules in § 416.924a(b) to determine whether we should use the infant's or toddler's corrected chronological age; i.e., the chronological age adjusted by the period of gestational prematurity.

* * * * *

1. * * *

b. * * * Screening instruments may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. However, in some cases, the results of screening tests may show such obvious abnormalities that further testing will clearly be unnecessary.

* * * * *

D. *Documentation:* 1. The presence of a mental disorder in a child must be documented on the basis of reports from acceptable sources of medical evidence. See §§ 404.1513 and 416.913. Descriptions of functional limitations may be available from these sources, either in the form of standardized test results or in other medical findings supplied by the sources, or both. (Medical findings consist of symptoms, signs, and laboratory findings.) Whenever possible, a medical source's findings should reflect the medical source's consideration of information from parents or other concerned individuals who are aware of the child's activities of daily living, social functioning, and ability to adapt to different settings and expectations, as well as the medical source's findings and observations on examination, consistent with standard clinical practice. As necessary, information from nonmedical sources, such as parents, should also be used to supplement the record of the child's functioning to establish the consistency of the medical evidence and longitudinality of impairment severity.

2. For some newborn and younger infants, it may be very difficult to document the presence or severity of a mental disorder. Therefore, with the exception of some genetic diseases and catastrophic congenital anomalies, it may be necessary to defer making a disability decision until the child attains age 3 months of age in order to obtain adequate observation of behavior or affect. See, also, 110.00 of this part. This period could be extended in cases of premature infants depending on the degree of prematurity and the adequacy of documentation of their developmental and emotional status.

3. For infants and toddlers, programs of early intervention involving occupational, physical, and speech therapists, nurses, social workers, and special educators, are a rich source of data. They can provide the developmental milestone evaluations and records on the fine and gross motor functioning of these children. This information is valuable and can complement the medical examination by a physician or psychologist. A report of an interdisciplinary team that contains the evaluation and signature of an acceptable medical source is considered acceptable medical evidence rather than supplemental data.

4. In children with mental disorders, particularly those requiring special placement, school records are a rich source of data, and the required reevaluations at specified time periods can provide the longitudinal data needed to trace impairment progression over time.

5. In some cases where the treating sources lack expertise in dealing with mental disorders of children, it may be necessary to obtain evidence from a psychiatrist, psychologist, or pediatrician with experience and skill in the diagnosis and treatment of mental disorders as they appear in children. In these cases, however, every reasonable effort must be made to obtain the records of the treating sources, since these records will help establish a longitudinal picture that cannot be established through a single purchased examination.

6. Reference to a ''standardized psychological test'' indicates the use of a psychological test measure that has appropriate validity, reliability, and norms, and is individually administered by a qualified specialist. By ''qualified,'' we mean the specialist must be currently licensed or certified in the State to administer, score, and interpret psychological tests and have the training and experience to perform the test.

7. Psychological tests are best considered as standardized sets of tasks or questions designed to elicit a range of responses. Psychological testing can also provide other useful data, such as the specialist's observations regarding the child's ability to sustain attention and concentration, relate appropriately to the specialist, and perform tasks independently (without prompts or reminders). Therefore, a report of test results should include both the objective data and any clinical observations.

8. The salient characteristics of a good test are: (1) Validity, *i.e.,* the test measures what it is supposed to measure; (2) reliability, *i.e.,* the consistency of results obtained over time with the same test and the same individual; (3) appropriate normative data, *i.e.,* individual test scores can be compared to test data from other individuals or groups of a similar nature, representative of that population; and (4) wide scope of measurement, *i.e.,* the test should measure a broad range of facets/aspects of the domain being assessed. In considering the validity of a test result, we should note and resolve any discrepancies between formal test results and the child's customary behavior and daily activities.

9. Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. The IQ scores in listing 112.05 reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15, *e.g.,* the Wechsler series. IQs obtained from standardized tests that deviate significantly from a mean of 100 and standard deviation of 15 require conversion to a percentile rank so that the actual degree of limitation reflected by the IQ scores can be determined. In cases where more than one IQ is customarily derived from the test administered, *e.g.,* where verbal, performance, and full scale IQs are provided in the Wechsler series, the lowest of these is used in conjunction with listing 112.05.

10. IQ test results must also be sufficiently current for accurate assessment under 112.05. Generally, the results of IQ tests tend to stabilize by the age of 16. Therefore, IQ test results obtained at age 16 or older should be viewed as a valid indication of the child's current status, provided they are compatible with the child's current behavior. IQ test results obtained between ages 7 and 16 should be considered current for 4 years when the tested IQ is less than 40, and for 2 years when the IQ is 40 or above. IQ test results obtained before age 7 are current for 2 years if the tested IQ is less than 40 and 1 year if at 40 or above.

11. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not covered under the provisions of listings 112.05A, 112.05B, and 112.05F. Listings 112.05A, 112.05B, and 112.05F may be the bases for adjudicating cases where the results of standardized intelligence tests are unavailable, *e.g.,* where the child's young age or condition precludes formal standardized testing.

12. In conjunction with clinical examinations, sources may report the results of screening tests, *i.e.,* tests used for gross determination of level of functioning. Screening instruments may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. However, in some cases the results of screening tests may show such obvious abnormalities that further testing will clearly be unnecessary.

13. Where reference is made to developmental milestones, this is defined as the attainment of particular mental or motor skills at an age-appropriate level, *i.e.,* the skills achieved by an infant or toddler sequentially and within a given time period in the motor and manipulative areas, in general understanding and social behavior, in self-feeding, dressing, and toilet training, and in language. This is sometimes expressed as a developmental quotient (DQ), the relation between developmental age and chronological age as determined by specific standardized measurements and observations. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, and the Revised Stanford-Binet. Formal tests of the attainment of developmental milestones are generally used in the clinical setting for determination of the developmental status of infants and toddlers.

14. Formal psychological tests of cognitive functioning are generally in use for preschool children, for primary school children, and for adolescents except for those instances noted below.

15. Generally, it is preferable to use IQ measures that are wide in scope and include items that test both verbal and performance abilities. However, in special circumstances,

such as the assessment of children with sensory, motor, or communication abnormalities, or those whose culture and background are not principally English-speaking, measures such as the Test of Nonverbal Intelligence, Third Edition (TONI–3), Leiter International Performance Scale-Revised (Leiter-R), or Peabody Picture Vocabulary Test—Third Edition (PPVT–III) may be used.

16. We may consider exceptions for formal standardized psychological testing when an individual qualified by training and experience to perform such an evaluation is not available, or in cases where appropriate standardized measures for the child's social, linguistic, and cultural background are not available. In these cases, the best indicator of severity is often the level of adaptive functioning and how the child performs activities of daily living and social functioning.

17. Comprehensive neuropsychological examinations may be used to establish the existence and extent of compromise of brain function, particularly in cases involving organic mental disorders. Normally these examinations include assessment of cerebral dominance, basic sensation and perception, motor speed and coordination, attention and concentration, visual-motor function, memory across verbal and visual modalities, receptive and expressive speech, higher-order linguistic operations, problem-solving, abstraction ability, and general intelligence. In addition, there should be a clinical interview geared toward evaluating pathological features known to occur frequently in neurological disease and trauma, *e.g.,* emotional lability, abnormality of mood, impaired impulse control, passivity and apathy, or inappropriate social behavior. The specialist performing the examination may administer one of the commercially available comprehensive neuropsychological batteries, such as the Luria-Nebraska or Halstead-Reitan, or a battery of tests selected as relevant to the suspected brain dysfunction. The specialist performing the examination must be properly trained in this area of neuroscience.

* * * * *

F. * * *

* * * While drugs used to modify psychological functions and mental states may control certain primary manifestations of a mental disorder, *e.g.,* hallucinations, impaired attention, restlessness, or hyperactivity, such treatment may not affect all functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the use of such drugs, particular attention must be focused on the functional limitations that may persist. * * *

112.01 Category of Impairments, Mental

112.02 *Organic Mental Disorders:* * * *

* * * * *

B. * * *

2. * * *

d. Marked difficulties in maintaining concentration, persistence, or pace.

* * * * *

112.05 *Mental Retardation:* * * *

* * * * *

D. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant limitation of function;

OR

* * * * *

F. * * *

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in paragraph B1b of 112.02, and a physical or other mental impairment imposing an additional and significant limitation of function;

OR

2. For children (age 3 to attainment of age 18), resulting in the satisfaction of 112.02B2a, and a physical or other mental impairment imposing an additional and significant limitation of function.

* * * * *

112.10 *Autistic Disorder and Other Pervasive Developmental Disorders:* * * *

A. * * *

* * * * *

2. For other pervasive developmental disorders, both of the following:

a. Qualitative deficits in the development of reciprocal social interaction; and

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

6. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

7. Section 416.920a is revised to read as follows:

§ 416.920a Evaluation of mental impairments.

(a) *General.* The steps outlined in §§ 416.920 and 416.924 apply to the evaluation of physical and mental impairments. In addition, when we evaluate the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when Part A of the Listing of Impairments is used, we must follow a special technique at each level in the administrative review process. We describe this special technique in paragraphs (b) through (e) of this section. Using this technique helps us:

(1) Identify the need for additional evidence to determine impairment severity;

(2) Consider and evaluate functional consequences of the mental disorder(s) relevant to your ability to work; and

(3) Organize and present our findings in a clear, concise, and consistent manner.

(b) *Use of the technique.* (1) Under the special technique, we must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether you have a medically determinable mental impairment(s). See § 416.908 for more information about what is needed to show a medically determinable impairment. If we determine that you have a medically determinable mental impairment(s), we must specify the symptoms, signs, and laboratory findings that substantiate the presence of the impairment(s) and document our findings in accordance with paragraph (e) of this section.

(2) We must then rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c) of this section and record our findings as set out in paragraph (e) of this section.

(c) *Rating the degree of functional limitation.* (1) Assessment of functional limitations is a complex and highly individualized process that requires us to consider multiple issues and all relevant evidence to obtain a longitudinal picture of your overall degree of functional limitation. We will consider all relevant and available clinical signs and laboratory findings, the effects of your symptoms, and how your functioning may be affected by factors including, but not limited to, chronic mental disorders, structured settings, medication, and other treatment.

(2) We will rate the degree of your functional limitation based on the extent to which your impairment(s) interferes with your ability to function independently, appropriately, effectively, and on a sustained basis. Thus, we will consider such factors as the quality and level of your overall functional performance, any episodic limitations, the amount of supervision or assistance you require, and the settings in which you are able to function. See 12.00C through 12.00H of the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter for more information about the factors we consider when we rate the degree of your functional limitation.

(3) We have identified four broad functional areas in which we will rate the degree of your functional limitation: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of

decompensation. See 12.00C of the Listing of Impairments.

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: None, one or two, three, four or more. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity.

(d) *Use of the technique to evaluate mental impairments.* After we rate the degree of functional limitation resulting from your impairment(s), we will determine the severity of your mental impairment(s).

(1) If we rate the degree of your limitation in the first three functional areas as ''none'' or ''mild'' and ''none'' in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do basic work activities (see § 416.921).

(2) If your mental impairment(s) is severe, we must then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the medical findings about your impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). See paragraph (e) of this section.

(3) If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity.

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. The disability examiner, a member of the adjudicative team (see § 416.1015), may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, the written decision issued by the administrative law judge or Appeals Council must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 416.1441, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

8. Section 416.928 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 416.928 Symptoms, signs, and laboratory findings.

* * * * *

(b) * * * Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, *e.g.*, abnormalities of behavior, mood, thought, memory, orientation, development, or perception. * * *

* * * * *

[FR Doc. 00–19648 Filed 8–18–00; 8:45 am]
BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Rulings 92–3(4), 93–1(4) and 98–2(8)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Rulings 92–3(4) and 93–1(4)—*Branham* v. *Heckler,* 775 F.2d 1271 (4th Cir. 1985); *Flowers* v. *U.S. Department of Health and Human Services,* 904 F.2d 211 (4th Cir. 1990) and 98–2(8) *Sird* v. *Chater,* 105 F.3d 401 (8th Cir. 1997)

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Rulings 92–3(4), 93–1(4) and 98–2(8).

EFFECTIVE DATE: This notice of rescission is effective September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5044.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence ruling explains how we will apply a holding in a decision of a United States Court of appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On March 10, 1992, we published Acquiescence Ruling (AR) 92–3(4) [1] (57 FR 8463) to reflect the holdings in *Branham* v. *Heckler,* 775 F.2d 1271 (4th Cir. 1985) and *Flowers* v. *U.S. Department of Health and Human Services,* 904 F.2d 211 (4th Cir. 1990). In *Branham,* the United States Court of Appeals for the Fourth Circuit held that when evaluating a claimant's impairment under section 12.05C of our Listing of Impairments, the claimant's inability to do his or her past relevant work established the additional and significant work-related limitation of function required by Listing 12.05C. In *Flowers,* the court applied the holding in *Branham* and stated that a claimant's inability to return to his or her past relevant work due to an impairment established a work-related limitation of function that met the requirement of Listing 12.05C. The AR applied to cases in which the claimant resided in Maryland, North Carolina, South Carolina, Virginia, and West Virginia at the time of the determination or decision at any level of administrative review.

On February 24, 1998, we published Acquiescence Ruling 98–2(8) (63 FR 9279) to reflect the holding in *Sird* v. *Chater,* 105 F.3d 401 (8th Cir. 1997). In *Sird,* the court applied the holding in *Branham* and held that an impairment that prevents a claimant from performing his or her past relevant work constitutes a significant work-related limitation of function that meets the requirements of Listing 12.05C. AR 98–2(8) applied to cases in which the claimant resided in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota at the time of the determination or decision at any level of administrative review.

In this issue of the **Federal Register,** we are publishing final rules that, among other things, revise section 12.00A of our Listings and revise Listing 12.05C. The final rules revise section 12.00A to state explicitly that when we adjudicate a claim under Listing 12.05C, we will assess the degree of functional limitation the additional impairment imposes to determine if it significantly limits an individual's physical or mental ability to do basic work activities, *i.e.,* is a severe impairment as defined in 20 CFR 404.1520(c) and 416.920(c). We also have revised section 12.00A of the Listings to restate our policy that, if the additional impairment does not cause limitations that are ''severe'' as defined in 20 CFR 404.1520(c) and 416.920(c), we will not find that the impairment imposes ''an additional and significant work-related limitation of function'' under Listing 12.05(c), even if the individual is unable to perform his or her past work because of the unique features of that work.

Accordingly, since the regulations that were the subject of the *Branham, Flowers* and *Sird* AR's have now been revised, we are rescinding AR's 92–3(4), 93–1(4) and 98–2(8) concurrently with the publication of the revised regulations. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: April 5, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–19740 Filed 8–18–00; 8:45 am]

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[1] On April 29, 1993, AR 93–1(4) was published in the **Federal Register** (58 FR 25996) to reflect a regulatory change that extended the IQ listing range in section 12.05C from ''60 to 69'' to ''60 through 70.'' Several technical revisions also were made by AR 93–1(4). Since both AR 92–3(4) and AR 93–1(4) have been rendered obsolete by the publication of the final rules revising the mental disorders listing applicable to adults in part A of the Listing of Impairments, both rulings are being rescinded.

Federal Register

Monday,

August 21, 2000

Part III

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Part 310

Comprehensive Tribal Child Support Enforcement Programs; Interim Final Rule

45 CFR Part 309

Tribal Child Support Enforcement Programs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 310

RIN 0970–AB73

Comprehensive Tribal Child Support Enforcement Programs

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Interim final rule.

SUMMARY: The Administration for Children and Families (ACF) is issuing this interim final rule to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193), and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105–33). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (CSE) programs meeting requirements contained in the statute and established by the Secretary by regulation. This interim final rule enables Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program directly or through agreement, resolution, or contract, to apply for and receive direct Tribal CSE funding. This interim final rule addresses the requirements in section 455(f) and provides guidance to these Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal CSE programs.

A separate notice of proposed rulemaking (NPRM) for a wider range of Tribal CSE programs is published concurrently with this interim final rule, in this **Federal Register**.

DATES: Effective date: This interim final rule is effective on August 21, 2000.

Comment dates: Consideration will be given to written comments received by December 19, 2000, and to comments made for the record at public consultations to be held by OCSE during the 120-day comment period. See the NPRM for Tribal CSE Programs in this **Federal Register** for additional information on submission of comments and on the public consultations.

ADDRESSES: Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attention: Director, Division of Policy and Planning, Mail Stop: OCSE/DPP. Written comments also may be submitted at the OCSE public consultations to be held during the comment period.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the rule, you should access the Administration for Children and Families Welfare Reform home page at ''http://www.acf.dhhs.gov/hypernews/'' and follow any instructions provided. You may also submit comments by telefaxing to (202) 401–3444. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., on the 4th floor of the Department's offices at 370 L'Enfant Promenade, SW, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Tribal Child Support Enforcement Program, (202) 205–4554, or OCSE Division of Policy and Planning, (202) 401–9386.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 from Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This interim final rule implements section 455(f) of the Social Security Act (the Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA; Pub. L. 104–193) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105–33).

This interim final rule is also issued under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Section 455(f) of the Act, as amended by Public Law 105–33, reads as follows: ''The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.''

Interim Final Regulations for Operational Tribal CSE Programs

The Administrative Procedure Act (APA) requires an agency to publish notice of a proposed substantive rule in the **Federal Register** and to provide an opportunity for public comment. Section 553(b)(B) of the APA allows an exception to the notice and comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Section 553(d) of the APA provides that a substantive rule be published in the **Federal Register** ''not less than 30 days before its effective date,'' but permits an exception ''for good cause.''

Under section 455(f) of the Act, the Department of Health and Human Services must issue regulations governing Tribal CSE programs before it can make a direct grant to a Tribe or Tribal organization that ''demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program * * *.'' The rulemaking process, including consultation prior to our drafting these regulations and opportunity for public comment on these rules, is ordinarily a lengthy process. A number of Tribes expressed concern that efforts they have under way, including demonstration projects funded under other Federal authorities, would be unduly delayed or disrupted if the regulatory process had to run its ordinary course before funds could be made available under section 455(f).

In response to this concern, and in an effort to ensure that Tribes can begin to provide services as quickly as possible, we are issuing concurrently a proposed rule which will become effective under the ordinary notice and comment rulemaking procedures, and this interim final rule which takes effect immediately upon publication, but which may be modified in response to public comment. The interim final rule allows those Tribes and Tribal organizations that currently operate comprehensive Tribal CSE programs comprising the five mandatory elements listed in section 455(f) of the Act (paternity establishment, support order establishment, modification, and enforcement, and location of absent

parents) and meeting the requirements specified in the interim rule to receive (subsequent to application and approval) direct funding for a Tribal CSE program under section 455(f) prior to the conclusion of the ordinary rulemaking process. By operating a comprehensive program, we mean that a Tribal CSE agency is operating a comprehensive Tribal CSE program under a cooperative agreement with a State IV–D program or that the Tribal CSE agency is operating its own comprehensive Tribal CSE program. A Tribe or Tribal organization could be considered to be operating a comprehensive program even if other organizations or States conducted some portions of the program under contracts or agreements with the Tribal CSE agency.

The Department finds that there is good cause to dispense with an NPRM with respect to direct funding of Tribes and Tribal organizations that currently operate a comprehensive child support enforcement program. We find that publication of regulations in proposed form would be impracticable, unnecessary, and contrary to the public interest for the following reasons. First, the Department has concluded that a Tribe or Tribal organization which already operates a comprehensive child support program obviously ''has the capacity'' to do so and therefore would be eligible for direct funding under any conceivable regulatory definition of the term ''has the capacity.'' Since such Tribes or Tribal organizations, after approval by the Secretary, would assuredly be eligible for funding under the final rule, the Department has concluded that it is in the best interests of the child support program and Tribal children and families to allow such Tribes or Tribal organizations to apply immediately for direct funding. This will allow these Tribes and Tribal organizations to continue to operate and, as appropriate, to expand their programs as quickly as possible and to provide uninterrupted service to their constituents. We believe that the families and children may be harmed without immediate funding for currently operating child support enforcement programs. Second, the criteria Tribes and Tribal organizations must meet to qualify for funds under the interim final regulations are derived from title IV–D of the Act and many of them are the same or similar to criteria already applicable to IV–D programs.

For these reasons, the agency believes that there is good cause to find that providing notice and comment in connection with immediate direct funding of Tribes and Tribal organizations that currently operate a comprehensive child support enforcement program is impracticable, unnecessary, and contrary to the public interest. With respect to the immediate effective date of this interim final rule, the Department finds that good cause exists to waive the 30-day post-promulgation period ordinarily required since: (1) A 30-day waiting period would unnecessarily delay applications for direct funding from Tribal entities that already operate comprehensive child support enforcement programs, (2) provision of child support enforcement currently being provided by Tribes and Tribal organizations may be interrupted by delays in the effective date for this interim final rule, which would adversely affect needy families, and (3) the Department will provide widespread notice to affected parties that already operate child support enforcement programs.

While this interim final rule makes certain Tribes and Tribal organizations immediately eligible for direct funding upon approval of their applications by the Secretary, the proposed rule, upon publication in final form, would apply to a wider range of Tribes and Tribal organizations. However, because the requirements in the proposed rule are subject to revision in response to public comment, the Department concluded that it would not be in the best interest of the program nor Tribes to allow any Tribe or Tribal organization to apply which might later be made ineligible for direct funding due to changes in the regulation.

There is some risk for a Tribe that elects to apply to receive direct funding under this interim rule. Its CSE program will be governed initially by the provisions of the interim rule. The risk to a Tribe that operates under the interim rule is that the rule may change, and the Tribe will have to change its program to comport with the final rule. The Tribe would not be at financial risk as long as its program was consistent with the interim rule and it changed its program to comply with the final rule in a timely manner.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. For discussion of the reporting and recordkeeping requirements in the Tribal CSE Program regulations, see the preamble to the NPRM for Tribal CSE Programs published in this **Federal Register**. These requirements are the same in the NPRM and this interim rule. Interested parties may comment to OMB on these requirements as explained in the NPRM's preamble. The Department has submitted these reporting requirements to OMB for its review.

The potential respondents to these information collection requirements under this interim final rule are approximately 10 Tribes and Tribal organizations during Year 1. We expect that the final rule for Tribal CSE programs will be published by the end of Year 1.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles. The regulations are required by PRWORA and govern direct funding to Tribal CSE agencies that demonstrate the capacity to operate a CSE program, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described in the preamble to the NPRM for Tribal CSE Programs in this **Federal Register**, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of these regulations.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and

least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that this rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. The following are estimated annual expenditures under the Tribal CSE Program under this interim final rule: FY 2000—$0; and FY 2001—$4.3 million. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review

This interim final rule is not a major rule as defined in 5 U.S.C., Chapter 8. It is effective upon publication.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this interim final rule may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This rule gives flexibility to Tribes and Tribal organizations to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal CSE programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government.'' This rule does not have federalism implications for State or local governments as defined in the Executive Order.

Background

The Child Support Enforcement Program was established in 1975 under title IV–D of the Social Security Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV–D program) is to ensure that both parents financially support their children. The IV–D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

For the first time in the history of the program, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provided authority under title IV–D of the Act for direct funding of Tribes and Tribal organizations for operating child support enforcement programs. Section 455(f) of the Act provides, ''The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.'' The Department of Health and Human Services (HHS) recognizes the unique relationship between the Federal Government and Federally recognized Indian Tribes and reflects this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to design their own child support programs to meet the needs of the Tribes' children and their families.

Title IV–D gives the Secretary broad and exclusive authority to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs and which meet the objectives of title IV–D. We believe that all IV–D programs must have in common a minimum set of fundamental characteristics to ensure that the objectives of title IV–D are implemented. This interim final rule for comprehensive Tribal CSE programs sets forth requirements that must be met in order for Tribes and Tribal organizations to receive direct funding under section 455(f) of the Act for such IV–D programs.

If a Tribal entity chooses not to undertake responsibility for operation of a IV–D program, section 454(33) of the Act provides that State IV–D agencies may negotiate cooperative agreements with a Tribe to ensure Tribal children and families receive much-needed support services. Under section 454(33) cooperative agreements, the funding relationship is between the State and the Federal government.

See the preamble to the NPRM for Tribal CSE programs in this **Federal Register** for additional background information.

Consultation Process

See the preamble to the NPRM for Tribal CSE programs in this **Federal Register** for information on the consultations held by OCSE to obtain Tribal input prior to publishing regulations for Tribal CSE programs.

Scope of Rulemaking

This interim final rule focuses on the explicit requirement in section 455(f) of the Act which allows the Secretary to make direct payments to Tribes and Tribal organizations that demonstrate the capacity to operate a CSE program which meets the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We are amending the Federal child support regulations by adding a new part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs, to title 45 of the Code of Federal Regulations. Part 310 contains requirements under which Tribes and Tribal organizations that currently operate comprehensive child support enforcement programs may apply for direct Tribal CSE funding and, upon approval of their applications, receive Federal funding and administer Tribal CSE programs under section 455(f). 45 CFR part 310 is effective upon publication of this interim final rule.

In the separate notice of proposed rulemaking published concurrently with this interim final rule, we propose to add a new part 309, Tribal Child Support Enforcement (CSE) Program, to the Federal child support regulations. The NPRM proposes for public

comment essentially the same set of requirements as are in subparts A through F of this interim rule, with the following exception. The NPRM includes proposed provisions both for Tribes and Tribal organizations that already are able to operate full, comprehensive CSE programs, and for Tribes and Tribal organizations that do not already operate comprehensive CSE programs and need program development funding for start-up CSE programs. Because this interim final rule applies only to Tribes and Tribal organizations that already operate comprehensive CSE programs, it does not include provisions for program development funding and start-up CSE programs.

Subpart G of this interim final rule contains additional specific requirements for interim funding of operational Tribal CSE programs.

We will develop final rules for Tribal CSE programs based on comments on the NPRM and interim rule. The final rules will apply to all Tribal CSE programs. We expect the final rules to be codified at 45 CFR part 309. After the final rules for Tribal CSE programs become effective, 45 CFR part 310 (the interim final rule) will be deleted from the Federal child support regulations.

Discussion of Regulatory Provisions

This interim final rule contains the following subparts:

- Subpart A—Tribal CSE Program: General Provisions;
- Subpart B—Tribal CSE Program Application Procedures;
- Subpart C—Tribal CSE Plan Requirements;
- Subpart D—Tribal CSE Program Funding;
- Subpart E—Accountability and Monitoring;
- Subpart F—Statistical and Narrative Reporting Requirements; and
- Subpart G—Interim Funding of Operational Tribal CSE Programs.

As noted, the provisions in subparts A through F are essentially the same in the NPRM and in this interim rule, except that the interim rule does not include the provisions relating to program development start-up funding.

For detailed discussion of subparts A through F, see the discussion of these subparts in the preamble to the NPRM. Keep in mind that the NPRM is proposed part 309, and this interim rule is part 310. Therefore, each regulatory provision has the same section and paragraph number in the NPRM and in the interim rule, but the part number is different. For example, the first section in both the NPRM and the interim rule (§_____.01—What does this part cover?) is § 309.01 in the NPRM and § 310.01 in the interim rule.

Program development start-up provisions are found in the NPRM in §§ 309.15(b)(2), 309.25(d), 309.65(b), 309.65(c), and 309.150. In this interim rule, §§ 310.15(b)(2), 310.25(d), 310.65(b), 310.65(c), and 310.150 are designated ''Reserved'' and left blank in order to keep the numbering consistent in both regulations.

Discussion of subpart G of this interim final rule follows.

Subpart G—Interim Funding of Operational Tribal CSE Programs

Who is eligible to apply to receive interim funding under this part? (section 310.180)

A Tribe or Tribal organization currently satisfying the requirements in this part (part 310), and currently operating a comprehensive Tribal CSE program that includes the five mandatory elements in section 455(f) of the Act (establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents) may apply for and upon approval, receive direct funding upon publication of this part.

During consultation a number of Tribes expressed concern that efforts they have under way, including demonstration projects funded under other Federal authorities, would be unduly delayed or disrupted if the full regulatory process had to run its course before any funds could be made available under section 455(f) of the Act. Therefore, Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program and meeting the requirements of this part are eligible to apply to receive interim funding.

What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding? (section 310.185)

In paragraph (a), a Tribe or Tribal organization with an operational comprehensive Tribal CSE program must meet the requirements under this part and demonstrate that the operational comprehensive program exists, through submittal of:

(1) A cooperative agreement with a State IV–D agency under section 454(33) of the Act that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part; or

(2) Evidence that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part, directly or through agreement, contract, or resolution with another entity. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics.

A Tribal CSE agency currently operating a comprehensive Tribal CSE program will use the application procedures outlined in Subpart B—Tribal CSE Program Application Procedures, and, in addition, will submit documentation of the comprehensive Tribal CSE program as required by this section.

We are requesting evidence of the operational comprehensive program in one of two ways. A Tribe or Tribal organization may be operating a comprehensive Tribal CSE program through a cooperative agreement with a State IV–D agency under section 454(33) of the Act. If the Tribe or Tribal organization is operating a comprehensive Tribal CSE program through a cooperative agreement with a State IV–D agency in accordance with section 454(33) of the Act and OCSE AT–98–21, and including the five mandatory statutory elements, this is a clear indication that the Tribe or Tribal organization is providing services in a manner that will meet the requirements of the regulations. In addition, we recognize that there may be Tribes and Tribal organizations that are operating a comprehensive Tribal CSE program without any involvement or agreement with the State IV–D agency. If this is the case, the Tribe or Tribal organization must submit proof that the operational program includes the five mandatory statutory elements and meets the requirements of section 455(f) of the Act and this part. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics. The application submitted in accordance with requirements of this part, plus the supporting evidence must provide enough detail and justification for the Secretary or designee to make a determination that the Tribe's CSE program meets or fails to meet necessary requirements.

As noted earlier in this preamble, a Tribe or Tribal organization could be

considered to be operating a comprehensive Tribal CSE program even if other entities—such as a State or another Tribe—conduct some portions of the program under agreement or contract with the Tribe or Tribal organization.

Under paragraph (b), the Secretary or designee will determine whether the Tribe or Tribal organization meets the requirements for interim funding, using the process described in this regulation. This is consistent with Subpart B—Tribal CSE Program Application Procedures, § 310.35, which provides that the Secretary or designee must approve or disapprove Tribal CSE program applications. We will review applications for interim funding to determine whether the application, and the applicant's operational CSE program, meet the requirements specified in this regulation. If an application is incomplete, we will tell the applicant the information we need in order to complete our review.

What requirements apply to programs operated with interim funding? (section 310.190)

Tribes and Tribal organizations that receive interim funding under part 310 must meet all requirements under this part.

Tribes and Tribal organizations operating Tribal CSE programs under this interim rule (codified at 45 CFR part 310) must comply with the requirements of the final rule (to be codified at 45 CFR part 309) upon its publication or after an appropriate phase-in period.

As outlined earlier, there is some risk for a Tribe or Tribal organization that elects to receive direct funding under this interim rule. The risk to a Tribe or Tribal organization that begins its program before the final rule is published is that the rules may change and the Tribe or Tribal organization will have to change its program. A Tribe or Tribal organization will not be at financial risk as long as its program was consistent with the interim final rule and the Tribe or Tribal organization changes its program in a timely manner to comply with the final rule.

We recognize that there may be a period of adjustment necessary for Tribes and Tribal organizations operating under the interim final rule to comply with the final rule. Because we cannot anticipate the nature of the comments or the changes that will be made to the final rule, we are not proposing a specific phase-in period for compliance with the final rule. For Tribes and Tribal organizations operating under the interim final rule, we are specifically soliciting comments on an appropriate phase-in period for compliance with the final rule.

List of Subjects in 45 CFR Part 309

Child support, grant program—social programs, Indians, Native Americans, Tribal Child Support Enforcement programs.

Dated: July 18, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: July 18, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed in the preamble, title 45 chapter III of the Code of Federal Regulations is amended by adding new part 310 to read as follows:

PART 310—COMPREHENSIVE TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAMS

Subpart A—Tribal CSE Program: General Provisions

Sec.
310.1 What does this part cover?
310.5 What definitions apply to this part?
310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

Subpart B—Tribal CSE Program Application Procedures

310.15 What is a Tribal CSE program application?
310.20 Who submits a Tribal CSE program application?
310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?
310.30 Where does the Tribe or Tribal organization submit the application?
310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?
310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?
310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?
310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

Subpart C—Tribal CSE Plan Requirements

310.55 What does this subpart cover?
310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?
310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?
310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?
310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?
310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?
310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?
310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?
310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?
310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?
310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?
310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?
310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?
310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

Subpart D—Tribal CSE Program Funding

310.125 On what basis is Federal funding in Tribal CSE programs determined?
310.130 How will Tribal CSE programs be funded?
310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?
310.140 What are the financial reporting requirements?
310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?
310.150 [Reserved]
310.155 What uses of Tribal CSE program funds are not allowable?

Subpart E—Accountability and Monitoring

310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?
310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

Subpart F—Statistical and Narrative Reporting Requirements

310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?
310.175 When are statistical and narrative reports due?

Subpart G—Interim Funding of Operational Tribal CSE Programs

310.180 Who is eligible to apply to receive interim funding under this part?

310.185 What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding?
310.190 What requirements apply to programs operated with interim funding?

Authority: 42 U.S.C. 655(f), 1302.

Subpart A—Tribal CSE Program: General Provisions

§ 310.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act through interim funding for Indian Tribes and Tribal organizations that currently operate comprehensive Tribal child support enforcement programs. Section 455(f) authorizes direct grants to Indian Tribes and Tribal organizations to operate CSE programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations currently operating comprehensive Tribal CSE programs to be eligible for grants under section 455(f). They establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; interim funding; and other program requirements and procedures.

§ 310.5 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families, Department of Health and Human Services.

Act means the Social Security Act, unless otherwise specified.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Central office means the central office of the Office of Child Support Enforcement.

CSE services are the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV–D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency.

Child support order and child support obligation mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

The Department means the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe and Tribe mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

Location means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

Regional office refers to one of the regional offices of the Administration for Children and Families.

Secretary means the Secretary of the Department of Health and Human Services.

Title IV–D refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

Tribal CSE agency means the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.

Tribal organization means the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.

§ 310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

The following are eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part:

(a) An Indian Tribe meeting the requirements of § 310.180 of this part, with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization meeting the requirements of § 310.180 of this part, that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe(s) that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

Subpart B—Tribal CSE Program Application Procedures

§ 310.15 What is a Tribal CSE program application?

(a) *Initial application.* The initial application must include:

(1) Standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs; and

(2) A Tribal CSE plan—a comprehensive statement meeting the requirements of subpart C of this part that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Annual refunding applications.* (1) Annual refunding applications must include standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs. As appropriate, annual refunding applications also may include amendment(s) to the Tribal CSE plan.

(2) [Reserved]

(c) *Additional application requirement for Tribal organizations.* The application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf.

§ 310.20 Who submits a Tribal CSE program application?

The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

§ 310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

(a) The initial application consisting of the Tribal CSE program plan that meets the requirements under subpart C of this part, and the application and budget information forms (SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

(b) Subsequent refunding applications containing only SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually at least 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time.

(c) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program:

(1) A Tribal CSE plan amendment must be submitted at the earliest reasonable time for approval under § 310.35. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements under § 310.65.

(2) Any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that such amendments be so considered, they must be submitted no less than 90 days before the proposed effective date of the new plan.

(d) [Reserved]

(e) The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

§ 310.30 Where does the Tribe or Tribal organization submit the application?

Applications must be submitted to the central office of the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate regional office.

§ 310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

(a) The Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved.

(b) The Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

§ 310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

(a) An application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, code, regulations, and procedures described in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV—D including: ensuring access to services; paternity establishment; support order establishment; basing child support orders on the noncustodial parent's ability to pay; collecting support; making timely and accurate payments to families; protecting due process rights; and protecting security of data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines that the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

(b) A written Notice of Disapproval of the Tribal CSE program application or plan amendment will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 310.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

§ 310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

(a) A Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 310.65 and subpart C of this part.

(c) After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held.

(d) A conference call or meeting under § 310.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held. This determination upon reconsideration shall be the final decision of the Secretary.

(f) The Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending the reconsideration under this part.

§ 310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

(a) If an application submitted pursuant to § 310.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

(b) If a plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time, once it has remedied the circumstances that led to disapproval of the application or amendment.

Subpart C—Tribal CSE Plan Requirements

§ 310.55 What does this subpart cover?

This subpart defines the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

(a) Under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently, and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State, and/or another agency pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State, or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts, or Tribal resolutions between the Tribal CSE agency and a Tribe, State, or other agency.

§ 310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the requirements listed in paragraphs (a)(1) through (14) of this section:

(1) Describes the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 310.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 310.75;

(5) Safeguarding procedures as specified under § 310.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 310.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 310.90;

(8) Procedures for the location of noncustodial parents as specified under § 310.95;

(9) Procedures for the establishment of paternity as specified under § 310.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 310.105;

(11) Procedures for income withholding as specified under § 310.110;

(12) Procedures for the distribution of child support collections as specified under § 310.115;

(13) Procedures for intergovernmental case processing as specified under § 310.120; and

(14) Reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected, and amount of past due support to be collected.

(b) [Reserved]

(c) [Reserved]

(d) No later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a) of this section, or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with paragraphs (d)(1) through (5) of this section, whichever is later, a Tribal CSE plan must include the following:

(1) Procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(2) Procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(3) Procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee;

(4) Procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee; and

(5) Procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

(e) In the CSE plan included in its initial application and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must certify that, as of the date the plan or plan amendment is submitted to the Department, there are at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing the Tribal organization to operate a CSE program on their behalf, that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

§ 310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes.

§ 310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a

Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements:

(a) A description of the structure of the agency and the distribution of responsibilities within the agency.

(b) Procedures under which applications for Tribal CSE services are made available to the public upon request.

(c) Procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action.

(d) Procedures to control the use of and to account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person who has access to or control over funds collected under the Tribal CSE program is covered by a bond against loss resulting from employee dishonesty;

(2) The requirement in paragraph (d) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles, or has access to support collections;

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program; and

(4) A Tribe may comply with the requirements of paragraph (d) of this section by means of self-bonding established under Tribal law and approved by the Secretary or designee.

(e) Procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

(f) Certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133.

§ 310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes safeguarding provisions consistent with the following and approved by the Secretary or designee:

(a) Procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or with other programs or purposes prescribed by the Secretary or designee.

(b) Procedures consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and which conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

(c) Procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

§ 310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes procedures for maintaining records necessary for proper and efficient operation of the program, including:

(1) Applications for support services;

(2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary or designee.

(b) The retention and access requirements for these records are prescribed at 45 CFR 92.42.

§ 310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes Tribal law, code, regulations, and/or other evidence that provides specific procedures that result in:

(a) Establishment of paternity for any child up to and including at least 18 years of age;

(b) Establishment and modification of child support obligations;

(c) Enforcing child support obligations, including requirements that Tribal employers comply with income withholding as required under § 310.110; and

(d) In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement for locating noncustodial parents by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary or designee.

§ 310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents:

(a) In all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) All sources of information and records reasonably available to the Tribe or Tribal organization must be used to locate noncustodial parents.

§ 310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures that result in the establishment of paternity included in

this section. For cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

(b) The Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

§ 310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan:

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

(c) The Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

(d) The Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(e) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

§ 310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws and regulations providing for income withholding under which:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(b) To initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal form that includes the following:

(1) The amount to be withheld;

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid;

(3) A requirement that the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income;

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted;

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe;

(6) A requirement that, if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income; and

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(c) The income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

(d) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(e) The provisions of this section do not apply to that portion of a child support order that may be satisfied in kind.

(f) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

§ 310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following requirements:

(a) In cases where families receiving services from the Tribal CSE program are receiving Temporary Assistance for Needy Families (TANF) assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act;

(b) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act;

(c) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe, and any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family;

(d) In cases where families receiving services from the Tribal CSE program formerly received Tribal TANF assistance and assigned their right to child support to the Tribe, collected child support above current support may be retained by the Tribe as reimbursement for past Tribal TANF assistance payments made to the family for which the Tribe has not been reimbursed, and any collected child support in excess of the amount of unreimbursed Tribal TANF assistance received by the family must be paid to the family; and

(e) In cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

§ 310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes:

(a) Procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee; and

(b) Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

Subpart D—Tribal CSE Program Funding

§ 310.125 On what basis is Federal funding in Tribal CSE programs determined?

Federal funding of Tribal CSE programs is based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and which gives assurance that it will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part, and other official issuances of the Department.

§ 310.130 How will Tribal CSE programs be funded?

(a) *General mechanism.* Tribal CSE programs will be funded on an annual basis. At or just before the beginning of a Tribal grantee's program year, OCSE will issue a grant award to the Tribe or Tribal organization to operate its Tribal CSE program for the following 12-month budget period.

(b) *Special provision for initial grant.* A Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than an year (but not to exceed 17 months) to enable its program funding cycle to coincide with its desired annual funding cycle.

(c) *Determination of Tribal funding amounts.* The Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs to pay reasonable, necessary, and allocable costs to operate its Tribal CSE program, based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information '' Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee.

(d) *Federal and non-Federal shares.* (1)(i) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the amount of the Federal grant will not exceed 90 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the amount of the Federal grant will not exceed 80 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section.

(ii) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 10 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 20 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. The non-Federal share may be provided in cash and/or in kind, fairly valued, by the Tribe or Tribal organization and/or by a third party, in accordance with the requirements of 45 CFR 92.24 and this part.

(iii) Donations of funds, and in-kind contributions of property and services valued at fair market value, from a third party to a Tribe or Tribal organization, may satisfy the non-Federal share requirement. The non-Federal share requirement may not be satisfied by:

(A) Donations for which the donor receives or expects to receive a financial or economic benefit;

(B) Donations intended as consideration for any benefit received from the Tribe or Tribal organization;

(C) Donations whose costs ultimately will be borne by another Federal grant; or

(D) Any other donation which the Secretary or designee determines to benefit the donor in a manner inconsistent with 45 CFR part 92.

(2)(i) A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent non-Federal matching

share may request a waiver of part or all of the non-Federal share.

(ii) Requests for waiver of part or all of the non-Federal matching share must be included with initial applications for funding, refunding applications, and budget amendment requests, and must contain the following:

(A) A statement that the Tribe or Tribal organization lacks the available resources to meet the 10 or 20 percent non-Federal matching share;

(B) A statement of the amount of the non-Federal share that the Tribe or Tribal organization requests the Secretary or designee to waive;

(C) A statement of the reasons that the Tribe or Tribal organization is unable to meet the non-Federal share requirement; and

(D) Documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful.

(iii) The Secretary or designee may require submission of additional information and documentation as necessary. The Secretary or designee will grant a waiver of all or part of the non-Federal matching share, as appropriate, if he or she determines that a waiver request demonstrates that the Tribe or Tribal organization lacks sufficient resources to provide the non-Federal share, has made reasonable but unsuccessful efforts to obtain non-Federal share contributions, and has provided all required information. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(e) *Increase in approved budget.* A Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and Standard Form 424A (Budget Information '' Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment in accordance with § 310.25(c) of this part, with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted in accordance with § 310.25(e). The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving any additional funding.

(f) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System.

(g) Grant administration requirements. The Tribal CSE program is subject to the grant administration regulations under 45 CFR part 92.

§ 310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?

(a) A Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unobligated funds were awarded by the amount that remained unobligated at the end of this budget period.

(b) A Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grants officer listed on the most recent grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unliquidated funds were awarded, by the amount that remains unliquidated at the end of the liquidation period. Repeated failure by a Tribe or Tribal organization to liquidate obligations in a timely way would result in the Department's reexamination of the program budget development process and could result in action to address financial systems deficiencies.

§ 310.140 What are the financial reporting requirements?

(a) A Tribe or Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(b) A Tribe or Tribal organization operating a Tribal CSE program must submit the ''Child Support Enforcement Program: Quarterly Report of Collections'' (Form OCSE–34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(c) A Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidation of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

(d) The Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

§ 310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?

Federal funds are available for direct costs of operating a Tribal CSE program under an approved Tribal CSE application carried out under § 310.65(a) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the

appropriate negotiated indirect cost rate. Allowable activities and costs include:

(a) Support enforcement services provided to eligible individuals, including: parent locator services; paternity establishment; and support order establishment, modification, and enforcement services;

(b) Administration of the Tribal CSE program, including but not limited to the following:

(1) Establishment and administration of the Tribal CSE program plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems;

(c) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate;

(d) Establishment, modification, and enforcement of support obligations including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate);

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support;

(e) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate; and

(3) Making collections for another Tribal CSE program or for a State CSE program;

(f) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes;

(g) Activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund Offset;

(h) Establishing and maintaining case records;

(i) Planning, design, development, installation, enhancement, and operation of CSE computer systems;

(j) Staffing and equipment that are directly related to operating a Tribal CSE program;

(k) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal CSE program;

(l) The portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal CSE program activities;

(m) Service of process;

(n) Training on a short-term basis that is directly related to operating a Tribal CSE program;

(o) Costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities; and

(p) Any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A–87.

§ 310.150 [Reserved]

§ 310.155 What uses of Tribal CSE program funds are not allowable?

Federal Tribal CSE funds may not be used for:

(a) Services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees collected;

(d) Expenditures for jailing of parents in Tribal CSE program cases;

(e) The cost of legal counsel for indigent defendants in Tribal CSE program actions;

(f) The cost of guardians ad litem; and

(g) All other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A–87.

Subpart E—Accountability and Monitoring

§ 310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

§ 310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable under this part.

Subpart F—Statistical and Narrative Reporting Requirements

§ 310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

Tribes and Tribal organizations must submit the following information and statistics for Tribal CSE program activity and caseload for each budget period:

(a) Total number of cases and, of the total number of cases, the number that

are TANF cases and the number that are non-TANF cases;

(b) Total number of paternities needed and number of paternities established;

(c) Total number of support orders needed and the total number of orders established;

(d) Total amount of current support due and collected;

(e) Total amount of past-due support owed and total collected;

(f) A narrative report on activities, accomplishments, and progress of the program;

(g) Total costs claimed;

(h) Total amount of fees and costs recovered;

(i) Total amount of automated data processing (ADP) costs; and

(j) Total amount of laboratory paternity establishment costs.

§ 310.175 When are statistical and narrative reports due?

A Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of each budget period.

Subpart G—Interim Funding of Operational Tribal CSE Programs

§ 310.180 Who is eligible to apply to receive interim funding under this part?

A Tribe or Tribal organization currently satisfying the requirements in this part, and currently operating a comprehensive Tribal CSE program that includes establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, may apply for and upon approval, receive direct funding under this part.

§ 310.185 What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding?

(a) In order to receive interim funding under this part, a Tribe or Tribal organization with an operational comprehensive Tribal CSE program must meet the requirements under this part and demonstrate that the operational comprehensive program exists, through submittal of:

(1) A cooperative agreement with a State IV-D agency under section 454(33) of the Act that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part; or

(2) Evidence that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part, directly or through agreement, contract, or resolution with another entity. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics.

(b) The Secretary or designee will determine whether the Tribe or Tribal organization meets the requirements under this part and adequately demonstrates that the operational comprehensive CSE program exists.

§ 310.190 What requirements apply to programs operated with interim funding?

Tribes and Tribal organizations that receive interim funding must meet all requirements under this part.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 309

RIN 0970–AB73

Tribal Child Support Enforcement Programs

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) is issuing this notice of proposed rulemaking (NPRM) to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193), and amended by section 5546 of the Balanced Budget Act of 1997 (Public Law 105–33). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (CSE) programs meeting requirements contained in the statute and established by the Secretary by regulation. These proposed regulations address these requirements and related provisions, provide guidance to Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal CSE programs.

A separate interim final rule for comprehensive Tribal CSE programs is published concurrently with this NPRM in this **Federal Register**. The interim final rule enables Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program directly or through agreement, resolution, or contract, to apply for and receive direct Tribal CSE funding.

DATES: Consideration will be given to written comments received by December 19, 2000, and to comments made for the record at public consultations to be held by OCSE during the 120-day comment period.

ADDRESSES: Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attention: Director, Division of Policy and Planning, Mail Stop: OCSE/DPP. Written comments also may be submitted at the OCSE public consultations to be held during the comment period.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the rule, you should access the Administration for Children and Families Welfare Reform home page at ''http://www.acf.dhhs.gov/hypernews/'' and follow any instructions provided. You may also submit comments by telefaxing to (202) 401–3444. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., on the 4th floor of the Department's offices at 370 L'Enfant Promenade, SW, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Tribal Child Support Enforcement Program, (202) 205–4554, or OCSE Division of Policy and Planning, (202) 401–9386.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 from Monday through Friday between the hours of 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION:

Comments on Proposed Rule

Comments should be specific, address issues raised by the proposed rule, propose alternatives where appropriate, explain reasons for any objections or recommended changes, and reference the specific section of the proposed rule that is being addressed.

We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and received during the comment period.

In the interest of providing Tribes with adequate time to review and comment on this notice of proposed rulemaking, we modified the standard 60-day comment period and allow for 120 days. This is consistent with the extended 120-day comment period following the July 22, 1998 publication of the Notice of Proposed Rulemaking for the Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and Native Employment Works (NEW) Program (63 FR 39366).

Public Consultations

To obtain the broadest public participation possible on these proposed rules, OCSE plans to conduct three public consultations during the comment period. These consultations also are intended to further solicit Tribal input on the Tribal Child Support Enforcement Program, as mandated by Presidential Executive Memoranda on April 29, 1994, and May 14, 1998.

We plan to publish a separate notice with the specific locations, dates, and times of these consultations, and to mail notices to all Federally recognized Indian Tribes and State IV–D agencies. Further information regarding these consultations, including last-minute changes, will be available from the OCSE internet site (at ''www.acf.dhhs.gov/programs/cse/''), and from OCSE's contractor for the consultations.

At the consultations, Federal officials will explain and answer questions to clarify the proposed rules. Persons who attend the consultations may make oral presentations and/or provide written comments for the record at the consultations, at their option. They also may submit written comments to OCSE as explained earlier in this preamble, at their option. We encourage persons who make oral presentations at the consultations to submit written comments in support of their presentations.

We encourage any person who wishes to make an oral presentation on these proposed rules at any of the consultations to preregister before or at the consultation. We will provide specific information on preregistration in the separate notice to be published on these consultations. At the time of preregistration, identifying information about prospective presenters will be recorded, such as name, organization (if any), address, and telephone number, so that presenters can be accurately identified and properly introduced at the consultations. Persons who preregistered will make their presentations first; then, as time allows, persons who did not preregister will make their presentations. Presentations must be about the proposed rule, should be specific, and should include specific recommendations for changes where appropriate. In fairness to other participants, presentations should be concise and will be limited to a maximum of 10 minutes each. To clarify presentations, we may ask questions. Presentations will be recorded and included in the public record of comments on the proposed rules, unless a commenter does not want his or her comments to be on the record.

At the consultations, we cannot address participants' concerns regarding the proposed rules, or respond to questions about the proposed rules other than questions asking for clarification. Instead, we will consider comments and recommendations provided at the consultations, and written comments and recommendations submitted as described earlier in this preamble, as we

prepare the final version of these regulations.

Statutory Authority

These proposed regulations implement section 455(f) of the Social Security Act (the Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA; Pub. L. 104–193) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105–33).

This proposed regulation is also issued under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Section 455(f) of the Act, as amended by Public Law 105–33, reads as follows: ''The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.''

Public Law 102–477 and Public Law 93–638

Public Law 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992, established a demonstration program under which Indian Tribes may integrate program services and consolidate administrative functions under Federally funded programs they administer for employment, job training, and related services. Child support enforcement is not an employment, job training, or related services program. Therefore, child support funds may not be included as part of a Tribal plan under Pubic Law 102–477, and Tribes must request child support funds directly from ACF.

Public Law 93–638, the Indian Self-Determination and Education Assistance Act, authorizes self-determination contracts under which Indian Tribes may plan, conduct, and administer certain programs and services that are provided by the Federal government for the benefit of Indians because of their status as Indians. It also authorizes self-governance compacts and funding agreements under which Tribes may plan, conduct, consolidate, and administer programs, services, and functions of the Department of the Interior and the Indian Health Service that are otherwise available to Indian Tribes or Indians. Child support enforcement is not among the programs and services that may be contracted or compacted pursuant to Public Law 93–638. Child support enforcement is not a program or service provided by the Federal government for Indians because of their status as Indians. Nor is it a program, service, or function of the Department of the Interior or the Indian Health Service.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Public Law 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these requirements as described below. This NPRM contains reporting requirements at proposed 45 CFR part 309, and the interim final rule for comprehensive Tribal CSE programs contains reporting requirements at 45 CFR part 310. The Department has submitted these reporting requirements to OMB for its review.

Proposed part 309 and part 310 contain a regulatory requirement that, in order to receive funding for an independent Tribal CSE program, a Tribe or Tribal organization must submit an application containing standard forms 424 and 424A and a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. Tribes and Tribal organizations must respond if they wish to operate a Federally funded program. In addition, any Tribe or Tribal organization participating in the program would be required to submit standard form 269 and form OCSE 34A and to submit statistical and narrative reports regarding its Tribal CSE program. The potential respondents to these information collection requirements are approximately 10 Federally recognized Tribes, and Tribal organizations, during Year 1; 65 additional Federally recognized Tribes and Tribal organizations during Year 2; and 75 additional Federally recognized Tribes and Tribal organizations during Year 3; for a three year total of 150 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of respondents	Responses per respondent	Average burden per response	Total Annual Burden
Year 1:				
SF 424	10	1	0.75	7.5
SF 424A	10	1	3	30
SF 269	10	5	2	100
45 CFR 309—Plan	10	1	480	4,800
Form OCSE 34A	10	4	8	320
Statistical Reporting	10	1	24	240
Total	.....	.....	.....	5,497.5
Year 2:				
SF 424	75	1	.75	56.25
SF 424A	75	1	3	225
SF 269	75	5	2	750
45 CFR 309—Plan	65	1	480	31,200
Form OCSE 34A	75	4	8	2,400

Information collection	Number of respondents	Responses per respondent	Average burden per response	Total Annual Burden
Statistical Reporting	75	1	24	1,800
Total	.....	.....	.....	36,431.25
Year 3:				
SF 424	150	1	.75	112.5
SF 424A	150	1	3	450
SF 269	150	5	2	1,500
45 CFR 309—Plan	75	1	480	36,000
Form OCSE 34A	150	4	8	4,800
Statistical Reporting	150	1	24	3,600
Total	.....	.....	.....	46,462.5

Total Burden for 3 Years: 88,391.25.
Total Annual Burden Averaged over 3 Years: 29,463.75 per year.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these regulations between 30 and 60 days after their publication in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington DC 20503, Attn: Ms. Wendy Taylor, Desk Officer for ACF.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed regulations are required by PRWORA and represent the proposed regulations governing direct funding to Tribal CSE agencies that demonstrate the capacity to operate a CSE program, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this NPRM.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rules and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. The following are estimated annual expenditures under the Tribal CSE Program: FY 2000–$0; FY 2001–$4.3 million; FY 2002–$17.6 million; FY 2003–$34.8 million; FY 2004–$44.8 million; FY 2005–$49.2 million. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this proposed regulation may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This proposed rule gives flexibility to Tribes and Tribal

organizations to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal CSE programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government.'' This rule does not have federalism implications for State or local governments as defined in the Executive Order.

Background

The Child Support Enforcement Program was established in 1975 under title IV-D of the Social Security Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV-D program) is to ensure that both parents financially support their children. The IV-D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

The United States Constitution recognizes all treaties made under the authority of the United States, including treaties with Indian Tribes, as the ''supreme Law of the Land.'' The Constitution, Federal law, and court decisions establish Indian affairs as a unique area of Federal concern. The United States pledges in treaties to protect Indian Tribes, thereby establishing one of the bases for the Federal trust responsibility and the government-to-government relationship with Indian Tribes. These fundamental principles continue to guide national policy towards Indian Tribes. The Federal policy to support and strengthen Tribes' right to self-determination has been firmly established and reaffirmed by every U.S. President for more than thirty years.

On April 29, 1994, at a historic meeting with the heads of Tribal governments, President Clinton reaffirmed the United States' ''unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions'' and issued a memorandum to all executive departments and agencies of the Federal Government, stating that: ''As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.''

The President's memorandum requires that in all activities relating to or affecting the government or treaty rights of Indian Tribes, the executive branch shall:

(1) Operate within a government-to-government relationship with Federally recognized Indian Tribes;

(2) Consult, to the greatest extent practicable and to the extent permitted by law, with Indian Tribal governments before taking actions that affect Federally recognized Indian Tribes;

(3) Assess the impact of agency activities on Tribal trust resources and assure that Tribal interests are considered before the activities are undertaken;

(4) Remove procedural impediments to working directly with Tribal governments on activities that affect trust property or governmental rights of the Tribes; and

(5) Work cooperatively with other agencies to accomplish these goals established by the President.

The Department and the Office of Child Support Enforcement are committed to carrying out the letter and spirit of this directive in the promulgation of regulations establishing the requirements which must be met by Tribes and Tribal organizations to be eligible for direct funding and in all dealings with Tribes.

Tribal Child Support Enforcement

Prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), title IV–D of the Act placed authority to administer the delivery of IV–D services solely with the States. However, on most Indian reservations, the authority of State and local governments is limited or non-existent. The Constitution, numerous court decisions, and Federal law clearly reserve to Indian Tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes (including domestic relations cases), to tax, and to license. Consequently, States which have attempted to provide IV–D services on Tribal lands have generally been constrained in their abilities to establish paternity and establish and enforce child support orders. Cooperative agreements between Tribes and States have helped bring child support services to some reservations.

Prior to enactment of PRWORA, Federal funding under title IV–D of the Act was limited to funding State child support enforcement programs and there was no direct Federal funding to Tribes for child support enforcement activities. Federal funding was available, through the State, for eligible expenditures of a Tribe pursuant to a cooperative agreement with the State, under which the State delegated functions of the IV–D program to the Tribal entity. The Tribal entity was required to comply with all aspects of title IV–D of the Act applicable to the function or functions delegated to the Tribe. Only under these circumstances was Federal reimbursement under title IV–D available to the State for costs incurred by the Tribal entity for performing IV–D functions.

For the first time in the history of the program, PRWORA provided authority under title IV–D of the Act for direct funding of Tribes and Tribal organizations for operating child support enforcement programs. Section 455(f) of the Act provides, ''The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.'' The Department of Health and Human Services (HHS) recognizes the unique relationship between the Federal Government and Federally recognized Indian Tribes and reflects this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to design their own child support programs to meet the needs of the Tribes' children and their families.

Tribes may exercise their right to self-determination by deciding whether or not to operate a Tribal CSE program. Tribes which choose to administer a Tribal CSE program meeting the objectives of title IV–D of the Social Security Act will have considerable

flexibility to develop and administer programs consistent with Tribal laws and traditions. In this NPRM we have set forth regulations that allow for accommodation for unique Tribal situations in many circumstances. However, we believe there must be some degree of comparability among the Tribal and State IV–D programs in the nationwide child support enforcement program.

Title IV–D gives the Secretary broad and exclusive authority to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs and which meet the objectives of title IV–D. While section 455(f) particularly names establishment of paternity, establishment, modification and enforcement of support orders, and location of absent parents as objectives of title IV–D, this is a non-exclusive list. Title IV–D, as amended, was enacted by Congress ''for the purpose of enforcing the support obligations owed by noncustodial parents to their children * * * and assuring that assistance in obtaining support will be available under (IV–D) to all children (whether or not eligible for assistance for aid under part A) for whom such assistance is requested. * * *'' See S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974) and S. Rep. No. 387, 98th Cong., 2d Sess. (1984). We interpret the purpose or objectives of title IV–D in a manner that includes Indian children in the class of individuals for whom assistance in obtaining support is available under the Act and believe that section 455(f) must be read in a manner that is consistent with this interpretation. Exercise of the Secretary's broad authority under title IV–D to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs is an essential part of the coordinated Federal-State-Tribal effort to ensure that absent parents support their children. Therefore, we believe that all IV–D programs must have in common a minimum set of fundamental characteristics to ensure that the objectives of title IV–D are implemented. This proposed rule sets forth the requirements that must be met in order for a Tribe or Tribal organization to receive direct funding for such IV–D programs.

Alternatively, if a Tribal entity chooses not to undertake responsibility for operation of a IV–D program, section 454(33) of the Act provides that State IV–D agencies may negotiate cooperative agreements with a Tribe to ensure Tribal children and families receive much-needed support services. Under section 454(33) cooperative agreements, the funding relationship is between the State and the Federal government.

As a result of PRWORA, title IV–D of the Act recognizes a number of ways in which IV–D services may be provided on Tribal lands:

- A State and Tribe or Tribal organization under a State IV–D program provide for the cooperative delivery of child support enforcement services in Indian country pursuant to a cooperative agreement under section 454(33) of the Act.
- A State or local IV–D agency provides child support enforcement services on Tribal lands pursuant to an agreement under which the Tribe agrees to recognize the State or county jurisdiction on Tribal lands for the specific purpose of child support enforcement.
- A State provides child support enforcement services on Tribal lands because it has jurisdiction in Indian country that is lawfully exercised under Public Law 83–280. Since Public Law 83–280 delegated Federal jurisdiction to some States, the jurisdiction of tribal courts remains concurrent with the States to the same extent that it was concurrent with the Federal government prior to enactment of the law. As a result of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301–03), a Tribe must consent to any additional assumptions of State Public Law 83–280 jurisdiction after enactment of this statute. To the extent that State jurisdiction is lawfully exercised within Indian country, such civil grant of authority is for adjudicatory jurisdiction only.
- A State and Tribe or Tribal organization under a State IV-D program provide for the delivery of child support enforcement services in Indian country pursuant to a cooperative agreement in effect prior to August 22, 1996, the date of enactment of PRWORA.
- A Tribe or Tribal organization operates a child support enforcement program that meets the requirements for such a program established by the Secretary in regulations promulgated pursuant to section 455(f) of the Act.

This regulation addresses *only* Tribal CSE program requirements for direct funding under section 455(f) of the Act.

Consultation Process

The Administration for Children and Families and the Department of Health and Human Services are committed to consulting with Indian Tribes on a government-to-government basis. In compliance with the mandate to promulgate regulations for direct funding of Tribal CSE programs, in 1998 the Federal Office of Child Support Enforcement, Native American Program (OCSE-NAP), conducted a series of six Nation-to-Nation consultations with Indian Tribes, Tribal organizations and other interested parties with the goal of obtaining Tribal input prior to publishing the NPRM for direct funding for Tribal CSE programs. In response to Tribal concerns, the consultations were conducted to obtain maximum Tribal input, as mandated by Presidential Executive Memoranda of April 29, 1994, and May 14, 1998, before proposed regulations were drafted.

The consultations were designed to solicit Tribal input *prior to* the drafting of any Federal regulations for direct funding to Tribes and Tribal organizations to operate their own child support enforcement programs. The consultations were held across the country to allow for greater opportunity for Tribal participation. The consultation sites were Albuquerque, New Mexico; Portland, Oregon; Nashville, Tennessee; Fairbanks, Alaska; Washington, DC; and Prior Lake, Minnesota on the Shakopee Indian reservation. In addition, a toll free ''800'' number was created to allow for additional comments and input by Tribes and Tribal organizations. After the consultation process ended, OCSE solicited further input from individual participants from the previous consultations who had expressed an interest in helping OCSE to understand the issues raised during the consultation process.

Each of the consultations lasted for 2½ days and comprised two distinct parts. The first part was an overview of the National Child Support Enforcement Program. This session was designed to provide participants with basic information about child support enforcement so that they would be better informed for the actual consultations. This portion of the consultation consisted largely of information sharing by Federal OCSE staff. It was designed for those new to the Tribal child support enforcement arena as well as those who needed additional background information about paternity establishment and child support enforcement. In addition, this first portion of the consultation doubled as informal training for Tribal child support enforcement staff.

The second and longer part of the consultation was devoted to Federal staff listening to Tribal input regarding the regulations. OCSE used neutral Native American facilitators to help focus the discussion, to leave Federal officials free to listen, and to help draw input and questions from all participants.

In order to effectively coordinate the six consultations and obtain Tribal input, OCSE utilized American Indian experts in the field of child support enforcement from three perspectives. These perspectives were divided into three distinct tracks: Tribal leadership, legal, and social work. The use of the three distinct tracks was the most effective means of reaching the various Tribal constituencies, as it allowed participants to focus in the areas of most interest to them.

The Tribal leadership track addressed the questions and concerns of Tribal leadership with specific attention being paid to the implementation of the Tribal CSE provisions and satisfaction of the requirements for the Secretary to issue regulations. The options and choices of Tribal governments regarding Tribal CSE program implementation were the primary topics of discussion.

The legal track addressed specific areas of legal concern that Tribes had regarding the Tribal CSE regulations. In the legal track, the concerns and questions of Tribal attorneys, Tribal court judges, and those associated with the legal aspect of the welfare reform law were addressed. Legal specialists in Tribal child support enforcement were utilized to present the Tribal CSE information.

The social worker/practitioner track addressed the questions and concerns of Tribal staff who would be implementing the Tribal CSE provisions of PRWORA. This track focused upon the types of issues and situations that may confront front-line Tribal CSE workers before, during, and after the implementation of the options available under the Tribal CSE provisions of PRWORA. In addition, Tribal CSE workers' suggestions and recommendations to improve the implementation of Tribal CSE programs were elicited and discussed.

A general session allowed Tribes the opportunity to present their concerns and ask questions about the consultation process. Tribes made very clear that they desired the opportunity to present their concerns and questions in an unfettered fashion to Federal officials. This final session allowed participants the opportunity to review, discuss, and summarize their input into the Tribal CSE regulations. The three facilitators conducted presentations so that all participants and Federal officials could hear concerns raised in each track. This was followed by a general discussion by all participants that allowed additional comments and concerns to be addressed and brought to the attention of Federal officials.

Tribal Issues of Concern

The consultations were successful in eliciting a wide range of questions, issues, concerns, and suggestions. We have worked to ensure that information and concerns raised in the consultations were shared with both staff working on individual regulatory issues and key policymakers. The government-to-government consultations were very useful in identifying key issues and evaluating policy options. Several issues were repeatedly raised during the consultations, and they are summarized below.

1. Sovereignty

One of the primary issues of concern was that of Tribal sovereignty. Federally recognized Indian Tribes have a unique government-to-government relationship with the Federal government and want to ensure that nothing is done to threaten or lessen their status.

We recognize the status of Tribes and have attempted to convey flexibility and recognition of the status of Tribes in the proposed rule. The regulation recognizes the relationship by supporting:

- Tribes' right to design child support programs that reflect their laws, traditions, and custom, consistent with Federal law and regulations.
- Tribes' right to exercise self-determination and decide whether or not to operate a Tribal CSE program.
- The direct funding relationship between Tribes and the Federal government.

2. Jurisdiction

Tribes are very concerned about jurisdictional issues involved in the enforcement of Tribal CSE. Some of these issues are concurrent jurisdiction, court order modifications, collections from other jurisdictions, jurisdiction under Public Law 83–280 (commonly referred to as Public Law 280), jurisdiction between a Tribe and States, and jurisdictional issues between Indian Tribes. Participants raised questions about the role of the Indian Child Welfare Act. They also raised concerns about the need to clearly define the recipients of Tribal CSE program services.

The proposed regulations do not address the issue of jurisdiction. Fundamentally, the jurisdiction of a Tribal CSE program will be determined by Tribal law and the jurisdiction of the Tribe's courts or administrative process, and by applicable Federal law (as in the case of Public Law 280 States and Tribes). In practice a Tribe's CSE ''service area'' will be determined by the jurisdiction of its courts or administrative process.

3. Full Faith and Credit

Tribes are concerned with the application and impact of the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B) on their child support enforcement cases and orders. Will this law erode Tribal sovereignty? Will States or other Tribal courts give full faith and credit to a Tribe's judgment or Tribal CSE orders? Must Tribes give full faith and credit to States and other Tribal CSE orders and judgments? Will Tribes have any ability to adjust or abrogate large arrearages accrued by a Tribal member under a State child support order? Will Tribal courts be able to adjust the current amount of such a State order to reflect the level of income and earnings potential of Tribal members? Will there be reciprocity of enforcement of Tribal decrees and State decrees in courts?

In order for child support enforcement to succeed in Indian country, it is important for State and Tribal governments to work together. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in giving full faith and credit for Tribal child support orders. Likewise, Tribes should cooperate with States in giving full faith and credit for State child support orders.

The Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B(b)) defines ''State'' to include ''Indian country (as defined in section 1151 of title 18).'' This means that throughout the Full Faith and Credit for Child Support Orders Act provisions, wherever the term ''State'' appears it must be read to include ''Tribe'' as well. The Full Faith and Credit for Child Support Orders Act defines ''child support order'' to be ''a judgement, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum,'' and ''court'' to mean a ''court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.''

Section 1738B(c) of the Full Faith and Credit for Child Support Orders Act states that ''A child support order made by a court of a State is made consistently with this section if—

(1) A court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

(A) Has subject matter jurisdiction to hear the matter and enter such an order; and

(B) Has personal jurisdiction over the contestants; and

(2) Reasonable notice and opportunity to be heard is given to the contestants.''

Section 1738B(a) of the Full Faith and Credit for Child Support Orders Act requires ''the appropriate authorities of each State'' to ''enforce according to its terms a child support order made consistently with this section by a court of another State. * * *'' We believe that this means that where a Tribal court or administrative agency makes a child support order that is consistent with 28 U.S.C. 1738B(c), that order must be enforced by the State and where a State court or administrative agency makes a child support order that is consistent with 28 U.S.C. 1738B(c), that order must be enforced by the Tribe.

In the situation where a Tribal court or administrative agency establishes a child support order consistent with 28 U.S.C. 1738B(c) and subsequently the obligor Tribal member moves off-reservation, the Tribe would lose jurisdiction over that Tribal member, but States would have to enforce that Tribal child support order according to its terms the same as they would have to enforce a valid child support order from any other State.

In the situation where a State court or administrative agency establishes a child support order consistent with 28 U.S.C. 1738B(c) and subsequently the obligor Tribal member moves on-reservation, the Tribe, under 28 U.S.C. 1738B(a), would have to enforce that State child support order according to its terms.

While Tribes cannot adjust State orders retroactively or reduce arrearages owed under State orders, there are ways to ensure support is set based on an individual's ability to pay. Tribes can set orders based on guidelines and ability to pay. A State could accept less than the full payment of arrearages assigned to the State on the same grounds that exist for compromise and settlement of any other judgment in the State. However, under the terms of FFCCSOA, a Tribe or Tribal organization may not modify a child support order issued by a State if such order complies with 28 U.S.C. 1738B(c) unless the issuing State no longer has continuing, exclusive jurisdiction and the Tribe has proper jurisdiction to issue orders or the parties file written consent to the modification. If no party or the child reside in the issuing State, the Indian Tribe may modify and enforce the order by registering that order with the State with jurisdiction over the non-moving party. In the absence of assignment, child support arrears may only be compromised by an agreement between the obligee and obligor. We encourage States and Tribes to work together on this and other issues.

4. Access to Federal Processes, Privacy Concerns and Computer Systems

Tribes want to know if they will be able to access the Federal Parent Locator Service (FPLS) and the Federal Income Tax Refund Offset Program. They also desire to set up their own CSE computer systems. Tribes have privacy concerns relating to data collected by Tribes on their members, which they do not want made public.

Tribes may access the FPLS through either a State Parent Locator Service or by a secured electronic means in accordance with instructions issued by the Secretary. We are soliciting comments, in another section of this preamble, on the development of options for direct Tribal access to FPLS. We are also coordinating with the IRS to determine the extent to which Tribes may have access to tax return information for locate and enforcement purposes.

The Internal Revenue Code does not provide direct access by Tribes to the Federal Income Tax Refund Offset process. However, Tribes and Tribal organizations may access the Federal Income Tax Refund Offset Program by submittal through State IV–D offices. This issue is addressed in more detail in a later section of the preamble.

Under these proposed rules, the reasonable and allowable costs of developing and operating Tribal CSE computer systems are eligible for Federal funding under an approved Tribal CSE program. We agree that the nature of child support data is highly confidential and, therefore, the proposed rule incorporates strict safeguarding requirements.

5. Paternity

There are Tribal concerns surrounding the establishment of paternity by Tribal tradition versus genetic testing. There are also privacy concerns regarding access to data obtained from any genetic testing. Will States honor Tribal paternity judgments based on Tribal law, code, tradition, and custom?

The proposed rule recognizes the unique nature of Tribal law and tradition and seeks to ensure that Tribal tradition, customs and practices are honored. Establishment of paternity for child support purposes does not automatically enroll minor children into Tribes. Each Tribe has codes that address Tribal membership requirements. Tribes will continue to determine membership in accordance with their enrollment criteria. Privacy, as addressed previously, is crucial to the success of the program and the protection of individual rights, both Indian and non-Indian alike.

We believe that under the State-enacted Uniform Interstate Family Support Act (UIFSA) statutes and the Full Faith and Credit for Child Support Orders Act, States are required to honor Tribal child support orders based on paternity establishment pursuant to Tribal law, in the same manner that a Tribe is compelled to honor a State child support order based on a State's determination of paternity.

6. Funding

A significant concern is how Tribes will be funded to operate Tribal CSE programs. Will grants to Tribes be funded at the 100 percent level? Will Tribes have lump sum payments and access to incentives? Will the funding mechanism afford all Tribes a reasonable base amount? Can there be privatization of services under funding? Do Tribes have to negotiate their funding level with States? Is there a match requirement? How much money will be available for Tribal CSE programs?

Under this proposed rule, funding will be awarded for 90 percent of the total amount of estimated and approved costs necessary for a Tribe or Tribal organization to operate an approved Tribal CSE program for the first three years of operation of a full Tribal CSE program under § 309.65(a). We are proposing a 10 percent non-Federal match in cash and/or in kind from Tribes and Tribal organizations, with provisions for waiver of this matching requirement for Tribes and Tribal organizations that lack sufficient resources. After a Tribe has operated a full CSE program for three years at the 90 percent match rate (not including any period of start-up funding), the Tribe's match would be increased to 20 percent and the Federal matching rate would be reduced to 80 percent. However, within five years of publication of the final rule, if the Secretary determines based on experience gained through operation of child support Tribal programs and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly.

While this level of Federal matching is higher than the current 66 percent matching rate available to States for

most title IV–D activities, it is akin to the higher Federal financial support States received in the early years of their programs. At that time the combination of Federal matching and incentive payments supported about 93 percent of a State's IV–D expenditures.

See proposed regulations at Subpart D—Tribal CSE Program Funding, for a discussion on the proposed match and how funding will be made available. The proposed regulation allows for start-up costs and explicitly allows Tribes and Tribal organizations full flexibility to operate all or part of their programs and to contract with other entities—*e.g.*, other Tribes, States, private organizations—to operate other portions of the program. Any combination is acceptable provided all requirements of the regulations and statute are met.

7. Existing Cooperative Agreements

How will existing cooperative agreements be affected? Can Tribes reach new cooperative agreements? Can old cooperative agreements be amended?

Indian Tribes operating directly funded Tribal CSE programs will find that the nature of their relationships with States has changed. For many Tribes, direct funding under section 455(f) will effectively replace or supersede their cooperative agreements with States. Tribes operating Tribal CSE programs under section 455(f) may obtain services from other entities, including States, through contracts or cooperative agreements. However, in this context, ''cooperative agreements'' has a different meaning than under section 454(33). Cooperative agreements reached in these situations, i.e., under section 455(f), will be for the purpose of a Tribe's obtaining services for its program from another source, rather than providing services under the auspices of a State's IV–D program, *i.e.*, under section 454(33).

8. Technical Assistance

Is it available? Who will provide the technical assistance? Will money be available for infrastructure development?

OCSE will provide technical assistance to Tribal CSE agencies operating Tribal CSE programs. In addition, this rule proposes that Tribes be able to use grant funds to obtain technical assistance from other Tribes, States and vendors and to provide technical assistance to other Tribes and States.

9. Eligibility/Start-up Costs

Who will be eligible to operate a Tribal CSE program? How quickly will a Tribe or Tribal organization be expected to have its program operational? Will there be provisions for start-up costs?

We propose that Federally recognized Tribes and Tribal organizations with at least 100 children under the age of majority as defined by Tribal law or code and within their jurisdiction are eligible to apply to directly operate a Tribal CSE program. We encourage Tribes with fewer than 100 children under the age of majority within their jurisdictions to consider entering into consortia arrangements with other Tribes, so that the combined total number of children under the age of majority within the Tribes' jurisdictions is 100 or more. These consortia could qualify as Tribal organizations for direct Tribal CSE funding. These arrangements could assist participants in providing efficient and effective child support enforcement services.

We anticipate that some Tribes and Tribal organizations will need time to structure programs and put in place the necessary laws and procedures. Accordingly, we propose to make start-up funding available for a maximum of two years, during which time we expect the Tribe or Tribal organization to make satisfactory progress in putting the required elements of a full CSE program in place. By the end of this start-up phase, we expect the Tribe to be able to operate-either directly or via contracts or agreements with other parties-all required elements.

Regulatory Reform

In its latest *Document Drafting Handbook,* the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In a memo dated June 1, 1998, the President urged the use of plain language in Government writing. In drafting this proposed rule, we have paid close attention to this guidance.

Regulatory Philosophy

Federal statutory and regulatory requirements on State child support programs have evolved and grown more specific over time. Many Tribes are just beginning to provide child support services to families. We intend to work with Tribal CSE agencies to ensure that their ability to establish Tribal child support programs is strengthened and fine-tuned over time. Regulations governing Tribal CSE programs must accommodate the differences between the new CSE programs of Federally recognized Tribes, which have a unique government-to-government relationship with the Federal government, and State CSE programs, which have evolved over the last two dozen years.

For the first time in the history of the Child Support Enforcement program, Tribes are specifically mentioned in the law. Section 455(f) of the Act, as added by PRWORA, gives OCSE an opportunity to provide direct funding to Indian Tribes in an unprecedented manner and to support Tribal self-determination. These regulations reflect OCSE's commitment to partnership with Tribes and Tribal organizations.

Scope of Rulemaking

This regulation focuses on the explicit requirement in section 455(f) of the Act, which allows the Secretary to make direct payments to Tribes and Tribal organizations that demonstrate the capacity to operate a CSE program which meets the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We propose to amend the Federal child support regulations by adding a new part 309, Tribal Child Support Enforcement (CSE) Program, under title 45 of the Code of Federal Regulations. This NPRM proposes to establish a basic regulatory structure for the Tribal CSE program in proposed part 309, which consists of subparts A through F.

In the separate interim final rule published concurrently with this NPRM, we are codifying interim final regulations for Tribes and Tribal organizations that currently operate comprehensive CSE programs. The interim final rule adds a new part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs, to the Federal child support regulations. 45 CFR Part 310 is effective upon publication of the interim final rule.

In this NPRM, we are proposing for public comment essentially the same set of requirements as are in subparts A through F of the interim final rule, with the following exception. The NPRM includes proposed provisions both for Tribes and Tribal organizations that already are able to operate full, comprehensive CSE programs, and for Tribes and Tribal organizations that do not already operate comprehensive CSE programs and need program development funding for start-up CSE programs. Because the interim final rule applies only to Tribes and Tribal organizations that already operate comprehensive CSE programs, it does

not include provisions for program development funding for start-up CSE programs. (The proposed program development start-up provisions in this NPRM are in §§ 309.15(b)(2), 309.25(d), 309.65(b), 309.65(c), and 309.150.)

We will develop final rules for Tribal CSE programs based on comments on this NPRM and the interim rule. The final rules will apply to all Tribal CSE programs. We expect the final rules to be codified at 45 CFR part 309. When the final rules for Tribal CSE programs are published, 45 CFR part 310 (the interim final rule) will be deleted from the Federal child support regulations.

Discussion of Regulatory Provisions

The following is a discussion of all the regulatory provisions included in this NPRM. The discussion follows the order of regulatory text, addressing each subpart and section in turn.

Subpart A—Tribal Child Support Enforcement (CSE) Program: General Provisions

What Does This Part Cover? (section 309.01)

In paragraph (a), we propose that part 309 prescribe the rules for implementing section 455(f) of the Social Security Act (the Act). Section 455(f) of the Act authorizes direct grants for Indian Tribes and Tribal organizations to operate child support enforcement programs.

In paragraph (b), we propose that these regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f). They also establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

In recognition of the unique legal relationship the United States has with Tribal governments, these regulations will be applied in a manner that respects and promotes the government-to-government relationship between Federally recognized Indian Tribal governments and the United States government and Tribal self-determination.

What Definitions Apply to This Part? (section 309.05)

This section of the proposed rule includes definitions of some terms used in part 309. In drafting this section, we have defined those terms used in the proposed rule that must be understood consistently by all who use these rules. Most terms are self-explanatory, *e.g.*, acronyms or shortened versions of longer titles. Only five bear further explanation in this preamble.

We define *CSE services* as ''the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV-D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency.''

We define *Indian* as ''a person who is a member of an Indian Tribe.'' This is the same as the definition of this term in section 4 of the Indian Self-Determination and Education Assistance Act, Public Law 93–638.

We define *Indian Tribe and Tribe* as ''any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.'' This definition includes the definition of ''Indian tribe'' from section 102 of the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454 (25 U.S.C. 479a), which also is included at 18 U.S.C. 228, ''Failure to pay legal child support obligations.''

Because child support enforcement requires at least delegated governmental authority, we propose that basic eligibility under section 455(f) be limited to Federally recognized Indian Tribal governments. The Federal government acknowledges the governmental status of these Tribes and has a government-to-government relationship with them.

The Department of the Interior's published list of Federally recognized Tribes includes Tribes in the contiguous 48 States and Alaska Native villages and Tribes that function as political entities exercising governmental authority. The list includes all Indian Tribes which the Department of the Interior recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In the Tribal CSE program we propose to use the most current list of Federally recognized Tribes, including any Tribes added to each current list after publication.

The most recent list of these Tribes, entitled ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs,'' was published in the **Federal Register** in a notice on March 13, 2000, pursuant to section 104 of Public Law 103–454. This notice states that these ''entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes.''

We define *Tribal CSE agency* as ''the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.''

We define *Tribal organization* as ''the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.'' This definition of ''Tribal organization'' is based on the definition of ''tribal organization'' in section 4 of the Indian Self-Determination and Education Assistance Act, Public Law 93–638.

We have determined that basic eligibility for direct IV–D funding for Tribal CSE programs under section 455(f) is limited to Federally recognized Indian Tribes that exercise governmental authority. As any other governmental entity, eligible Tribes may delegate certain governmental authority to non-governmental bodies. This aspect of sovereignty is not unique to Indian Tribes but is equally applicable to State governments as well. We therefore propose that, in implementing section 455(f), a Federally recognized Tribal government may choose to carry out its own child support enforcement program, or it may choose to designate a Tribal organization to carry out a CSE program on its behalf. The Tribal organization would be vested by the Tribe to apply for and carry out a CSE program on its behalf; the Tribe's authorization would be provided by resolution.

Section 454(33) of the Act incorporates the definitions of ''Indian tribe'' and ''tribal organization'' in section 4 of Public Law 93–638. Section

454(33) authorizes cooperative agreements between certain Indian Tribes or Tribal organizations and State agencies operating a State Child Support Enforcement Program under title IV–D of the Act to ''provide for the cooperative delivery of child support enforcement services in Indian country.'' As noted, we believe that child support enforcement requires certain inherent governmental authorities. Because the definition of ''Indian tribe'' in Public Law 93–638 includes some entities that are not Tribal governments (*e.g.,* the Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act), we have not adopted that definition of ''Indian Tribe'' in this proposed rule for Tribal CSE programs under section 455(f). However, because CSE programs carried out under cooperative agreements pursuant to section 454(33) are carried out as part of a State government's CSE program, it is not necessary for ''Indian Tribes'' that reach cooperative agreements with States under section 454(33) to be governments.

We are interested in receiving public comments on our proposed definitions of Indian Tribe and Tribal organization.

Who is eligible to apply for Federal funding to operate a Tribal CSE program? (section 309.10)

In proposed paragraph (a), an Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe, is eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part.

In proposed paragraph (b), a Tribal organization that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf is eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part. In order for a Tribal organization to receive Tribal CSE funding, there must be at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe(s) on whose behalf the organization is applying.

We considered allowing Tribes with at least 50 children under the age of majority to apply for direct funding. The Child Care and Development Fund program, which also is administered by the Administration for Children and Families, requires a minimum of 50 children under age 13.

However, we believe that requiring a minimum of 100 children under the age of majority would be more appropriate for the Tribal child support enforcement program. This proposed requirement is based on the economics of establishing a CSE infrastructure and operating a CSE program. We believe that a CSE program can effectively and efficiently serve a 100-child population. We have concerns about whether it would be cost effective to operate a separate CSE program serving fewer children.

Tribes with fewer than 100 children will not be excluded from the Tribal CSE program. They may form a consortium with other Tribes to form a larger base and provide services to the children in need; one example of a Tribal organization that may apply for and receive direct Tribal CSE funding is a consortium of Tribes that, individually, may not have 100 children within their CSE jurisdictions, but have a combined total of 100 or more children when joined in the consortium. In addition, Tribes may authorize an existing Tribal organization (such as an Alaska Native regional nonprofit or an inter-tribal council) or another Tribe to provide CSE services on their behalf. This will enable them to take advantage of economies of scale and other benefits associated with larger programs, and will help to ensure that the programs are cost effective.

The proposed minimum of 100 children is based on the best information available to us at this time. However, we are specifically requesting comments on the minimum number of children that could be served by a Tribal CSE program at a cost that is reasonable.

Federally recognized Indian Tribal governments possess inherent governmental authority and sovereignty rights. The Federal government has a government-to-government relationship with them. As noted, we believe that eligibility to apply for direct grants for child support enforcement programs requires governmental authority. In proposed paragraph (b), each Tribal organization applying to operate a Tribal CSE program on behalf of one or more Tribes must include documentation of authorization from each Tribe to operate a Tribal CSE program on its behalf.

Subpart B—Tribal CSE Program Application Procedures

What is a Tribal CSE program application? (section 309.15)

This section of the proposed rule will establish the mandatory elements of a request for funding under section 455(f) of the Act.

In paragraph (a), we define a Tribal CSE initial funding application. The application includes standard application forms (SF 424, Application for Federal Assistance, and SF 424A—Budget Information—Non-Construction Programs) and a Tribal CSE plan.

The standard application forms outline the costs estimated by Tribes and Tribal organizations for funding of Tribal CSE programs on an annual basis. The forms require information including name of agency, type of application, descriptive title of applicant's project, estimated funding, budget categories (personnel, travel, equipment, supplies, contractual, indirect charges), non-Federal resources and forecasted cash needs. Tribes and Tribal organizations have used these forms and are familiar with them. Rather than develop a new application form, we chose to use existing forms.

The Tribal CSE plan is a comprehensive statement meeting the requirements of subpart C, that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including the establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

In proposed paragraph (b), we define Tribal CSE annual refunding applications. Refunding applications include standard application forms SF 424 and SF 424A. As appropriate, refunding applications also may include amendment(s) to the Tribal CSE plan. The refunding application of a Tribe or Tribal organization receiving start-up funding under § 309.65(b) also must include a progress report on its accomplishments to date and any proposed changes to its CSE plan and schedule.

In paragraph (c), we propose that the application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf. This language is meant to ensure that a Tribal organization representing itself as an agent of a Tribe has the express authority to do so.

Who submits a Tribal CSE program application? (section 309.20)

Under § 309.20, we propose that the authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

Originally, there was much discussion about who should submit the application. Because there are so many

different titles for Tribal leaders, and since Tribal CSE programs might be operated by a Tribal organization, we decided that the term ''authorized representative'' would mean an individual authorized by a Tribe or Tribal organization to submit that Tribe or Tribal organization's application.

When must a Tribe or Tribal organization submit a Tribal CSE program application? (section 309.25)

In paragraph (a) we propose that the initial application consisting of the Tribal CSE program plan that meets the requirements under Subpart C, and the Application and Budget Information forms (SF 424, Application for Federal Assistance and the SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

In maintaining flexibility for the Tribes and Tribal organizations, we believe that permitting the submission of applications at any point in the fiscal year will be advantageous because the Tribes and Tribal organizations will not be constricted by the Federal fiscal year and may submit an application when they are ready to begin operation of a Tribal CSE program. This will not impose any deadlines for Tribes and Tribal organizations submitting initial applications.

In paragraph (b), we propose that subsequent refunding applications containing only SF 424, Application for Federal Assistance and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually, 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time. The refunding requests are necessary after approval of the initial application, and must be approved on an annual basis, because the Tribes and Tribal organizations will be operating on an annual funding cycle.

In paragraph (c), we propose that if a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program: (1) A Tribal CSE plan amendment describing and, as appropriate, documenting the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements in § 309.65, must be submitted at the earliest reasonable time for approval under § 309.35; and (2) any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that an amendment be considered as a submission of a new plan, the amendment must be submitted no less than 90 days before the proposed effective date of the new plan.

In paragraph (d), we propose that if a Tribe or Tribal organization receives funding based on submittal and approval of a Tribal CSE plan under § 309.65(b), a progress report that describes accomplishments to date and any alterations to the Tribe or Tribal organization's plan and schedule must be submitted with the next annual refunding request. We want to ensure that the Tribal CSE agency is making progress towards implementation of a fully operational Tribal CSE program. This is discussed in more detail in a later section of the preamble.

In paragraph (e), we propose that the effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

Where does the Tribe or Tribal organization submit the application? (section 309.30)

We propose that applications must be submitted to the Federal Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate Regional Office.

We also encourage Tribes and Tribal organizations to provide a copy of their approved Tribal CSE plan to their State counterparts. Communication between Tribes and Tribal organizations and State IV–D agencies will facilitate child support services. This may help to eliminate duplicate efforts on the part of both Tribal CSE agencies and State IV–D agencies.

What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)? (section 309.35)

In paragraph (a), we propose that the Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved. It is important to note that this paragraph provides that applications will be approved or disapproved by the Secretary or designee, in keeping with the government-to-government relationship.

In paragraph (b), we propose that the Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

We believe parameters for approval and disapproval of applications are important. We contemplated a 45-day timeframe for review of the application, but decided that would be unrealistic and decided on 90 days for the review of applications. We also wanted to make allowances for the occasional submission of an incomplete plan and the resubmission of required information. OCSE will work closely with the Tribes and Tribal organizations to ensure that applications are approved (or disapproved) in accordance with the timeframes set forth. We think that this approach to the timeframes will be acceptable to all parties.

OCSE also considered imposing timeframes for Tribes' submission of additional information necessary to complete their applications. However, we decided that as it was in a Tribe's best interest to submit such information quickly, there was no need to impose an arbitrary deadline. In general, we have attempted in this regulation not to impose due dates and timeframes unless there was a compelling Federal interest to be satisfied.

What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)? (section 309.40)

In paragraph (a), we propose an application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, codes, regulations and procedures contained in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV–D including: Establishment of paternity, establishment, modification and enforcement of support orders and location of noncustodial parents; ensuring access to services; basing child support orders on the noncustodial parent's ability to pay; distribution of payments to families; protecting due

process rights of the individuals involved; and safeguarding data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

The requirements of the application and plan are found at § 309.65. Not only must these required elements be included in the Tribal plan, there must be evidence that the procedures outlined in the plan will result in outcomes consistent with the objectives of the title IV–D program. A Tribe or Tribal organization must demonstrate that its submission is expected to achieve desired outcomes, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents; ensuring access to services; basing child support orders on the noncustodial parent's ability to pay; distribution of payments to families; protection of due process rights of the individuals involved; and safeguarding of data. Each requirement is discussed in more detail in another section of the preamble.

In paragraph (b), we propose that a written Notice of Disapproval of the Tribal CSE program application will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 309.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

How may a Tribe or Tribal organization request a reconsideration of a disapproval action? (section 309.45)

In paragraph (a), we propose that a Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

In proposed paragraph (b), the Request for Reconsideration must include (1) all documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and (2) a written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 309.65 and subpart C.

After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. In paragraph (c), we propose that within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held. In paragraph (d), we propose that the conference call or meeting shall be held not less than 30 days nor more than 60 days after the date the notice of the call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time. In paragraph (e), we propose that the Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held, and that this determination upon reconsideration will be the final decision of the Secretary concerning this application or plan amendment. No further administrative appeal would be permitted.

In paragraph (f), we propose the Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending reconsideration under this part.

These provisions will ensure that any Tribe or Tribal organization whose CSE program application is disapproved will have the benefit of reconsideration provided that it requests reconsideration in a timely manner.

What are the consequences of disapproval of a Tribal CSE program application or plan amendment? (section 309.50)

In paragraph (a), we propose that if an application submitted pursuant to § 309.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

In proposed paragraph (b), if a plan amendment is disapproved there is no funding for the activity proposed in the plan amendment.

In proposed paragraph (c), a Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time. Once a Tribe or Tribal organization has remedied the deficiency in its application that caused the disapproval, it may reapply for Federal funding.

Subpart C—Tribal CSE Plan Requirements

What does this subpart cover? (section 309.55)

During consultation with the Tribes, it was evident that Tribes wanted regulations that were broad and not overly prescriptive. Tribes said that regulations that were too prescriptive would impinge on sovereignty issues and issues of tradition and custom. The statute indicates that a Tribe or Tribal organization must demonstrate the capacity to run a program that meets the objectives of title IV–D of the Act. We believe the mandatory requirements that we propose are necessary components that must be in place in order to meet title IV–D objectives and to operate the program efficiently and effectively.

We have included in the plan requirements only those items that we have concluded must be present in order for a Tribe or Tribal organization to demonstrate that it is capable of carrying out a child support program that meets the objectives of title IV–D. While the proposed regulation lists a number of functions that a Tribe or Tribal organization must include in its plan, we have, for the most part, regulated neither the manner in which those functions must be carried out nor the timeframe. In those cases where we have included more specificity, this reflects our conclusion that additional guidance was necessary to ensure that the objectives of title IV–D would be met or to ensure the effective and efficient administration of Tribal CSE programs.

With respect to timeframes, we continue to believe that timely action is essential to effective services. In fact, title IV–D has been amended over the years, to mandate various case processing timeframes for State action, especially as programs have become more automated. However, we believe it would be premature to consider such timeframes with respect to Tribal programs. Like States, Tribes need adequate time to develop their programs and to determine appropriate approaches, levels of automation, and processes for delivering services before adequate information will exist to consider specific timeframes for taking action. However, with such experience we believe timeframes for Tribal case processing may work to ensure that

Tribal families receive prompt and effective services.

As States gained experience in operating IV–D programs, we worked with them to set timeframe requirements for State programs. Similarly, as Tribes gain experience in operating CSE programs, we are committed to working with them to address timeframe requirements for Tribal programs. Tribes and we need experience with operational Tribal programs in order to learn how long it takes to carry out various Tribal CSE functions and to develop realistic timeframes based on this experience. Since most Tribal CSE programs will initially be start-up programs, we are proposing to begin these discussions with Tribes on the development of timeframes three years after publication of the final rules. As that point we hope to have sufficient experience with Tribal CSE programs to begin formally incorporating appropriate timeframes into Tribal CSE programs. Given the importance of timeframes in the Child Support program, we encourage your comments on this proposed approach to development of timeframes. Is three years too long to wait to begin discussion? Does three years provide sufficient time/experience with Tribal Child Support programs to develop workable timeframes?

In the meantime, we will communicate extensively with Tribes as they begin to design their CSE programs and applications and to implement their CSE programs. We will provide technical assistance to help them set realistic timeframe goals and carry out CSE functions in a timely and effective way.

We have attempted to keep the list of tasks that a Tribal CSE program must carry out in order to meet the criteria for direct Federal funding to the minimum necessary to ensure an effective and successful Tribal CSE program. In developing this list, we believe that every child support program in the United States must have certain fundamental characteristics in order to be successful and to enhance the effectiveness of the National child support effort. In developing this list, we have gone beyond the five core functions listed in section 455(f) of the Act. However, we believe the additional tasks we propose to add are consistent with the statutory requirement that a Tribe or Tribal organization demonstrate that it has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act.

These tasks ensure that Tribes and Tribal organizations will be able to take advantage of enforcement techniques that have been proven to be effective and will ensure that Tribes and Tribal organizations will be able to call on the resources of the entire National child support effort in pursuing noncustodial parents, both on and off the reservation.

Therefore, we propose to define in this subpart the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents. The plan is a narrative description of the Tribal CSE program. We chose not to regulate exactly the format, but rather to give parameters for Tribal plans. It is not our intention to tell a Tribal CSE agency how to write its plan; each plan may be different as long as it contains the required information. A recurring concern during the consultations was that Tribes wanted a child support program that was sensitive to Tribal values, customs and traditions. Because of the unique government to government relationship, the Tribal CSE plan gives the Tribe or Tribal organization an opportunity to outline its child support program-describing Tribal codes, laws, values, customs and traditions as they relate to CSE, showing how it meets each of the statutory requirements for direct funding, and describing in detail the child support enforcement program it will operate.

Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan? (Section 309.60)

In paragraph (a), we propose that under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

In paragraph (b), we propose that the Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization insures that all approved functions are carried out properly, efficiently and effectively.

In proposed paragraph (c), if the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State and/or another agency pursuant to a cooperative agreement, contract or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts or Tribal resolutions between the Tribal CSE agency and a Tribe, State or other agency.

A Tribe or Tribal organization may choose to provide CSE services in any number of combinations: for example, by operating a program under agreement with a State whereby the State provides some or all services or by contracting with a private organization. The Tribe is responsible for ensuring that the designated agency and those entities with which the designated agency has contracts or agreements comply with the requirements of 455(f) and these regulations.

What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program? (Section 309.65)

We are proposing that at the time of its application, a Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program either under proposed paragraph (a) or proposed paragraph (b). Proposed paragraph (a) lists all the requirements a Tribe or Tribal organization must meet in order to operate a full service child support program under section 455(f) of the Act. Proposed paragraph (b) describes the requirements a Tribe or Tribal organization must meet in order to receive ''start-up'' funding under section 455(f) to develop a program meeting all the requirements specified in paragraph (a).

In proposed paragraph (a), a Tribe or Tribal organization may demonstrate the capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the following requirements.

In paragraph (a)(1), we propose that the plan describe the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes, as specified under § 309.70.

In paragraph (a)(2), we propose that the plan include procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies. OCSE requires that all child support agencies accept applications for service from anyone and requires that the child support agency provide appropriate services. Issues surrounding jurisdiction are

complicated and we want to ensure that no one is denied service. So, we require that a child support agency, whether Tribal or State, accept any application for services and determine the types of services needed by the applicant and whether it can provide them. In some cases, *e.g.*, where a Tribal court or child support agency has no jurisdiction over any of the parties in a case, the only appropriate service may be to refer the applicant to an agency that can provide services. The ''appropriate agencies'' will be either Tribal CSE agencies in another jurisdiction, or a State IV–D agency with jurisdiction over the case.

In paragraph (a)(3), we propose that the plan include assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, establishment, modification, and enforcement of support orders.

In paragraph (a)(4), we propose that the plan include administrative and management procedures as specified under § 309.75.

In paragraph (a)(5), we propose that the plan include safeguarding procedures as specified under § 309.80.

In paragraph (a)(6), we propose that the plan include assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85.

In paragraph (a)(7), we propose that the plan include copies of all applicable Tribal laws and regulations as specified under § 309.90.

In paragraph (a)(8), we propose that the plan include procedures for the location of noncustodial parents as specified under § 309.95.

In paragraph (a)(9), we propose that the plan include procedures for the establishment of paternity as specified under § 309.100.

In paragraph (a)(10), we propose that the plan include guidelines for the establishment and modification of child support obligations as specified under § 309.105.

In paragraph (a)(11), we propose that the plan include procedures for income withholding as specified under § 309.110.

In paragraph (a)(12), we propose that the plan include procedures for the distribution of child support collections as specified under § 309.115.

In paragraph (a)(13), we propose that the plan include procedures for intergovernmental case processing as specified under § 309.120.

The requirements proposed in paragraphs (a)(3)–(a)(13) are the basic requirements of a child support enforcement program. These fundamental requirements have proven to be critical to successful establishment and enforcement of support orders in the State IV–D programs. In choosing these requirements, we have drawn from the experiences of the programs operating successfully since the inception of the Child Support Enforcement program. These requirements will ensure that records are secure, protect individuals and their privacy, and ensure the minimum necessary level of commonality between Tribal and State programs to ensure that we continue to have an efficient and effective child support enforcement program across the Nation. A more detailed explanation of each of the requirements can be found in the proposed sections of the NPRM as indicated above.

In paragraph (a)(14), we propose that the plan include reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected and amount of past-due support to be collected.

Initially, attainment of the performance targets will not be tied to funding. The plan must include the performance targets, but funding is not contingent upon the targets being met. In the statistical and narrative reports required at § 309.170, grantees must report on their success in reaching their performance targets. We do not want to set arbitrary performance targets for Tribal CSE agencies, and we believe that each Tribe or Tribal organization should be able to estimate the targets it can attain. We will assure that technical assistance is provided to help Tribal CSE programs set and meet appropriate performance targets.

We need more experience with, and information on, operational Tribal CSE programs before we determine what performance standards to require for them. Within three years of publication of the final rule and after Tribal CSE programs have gained experience and had an opportunity to gather data on performance, we will have a better understanding of what targets are attainable. At that point, we plan to work with Tribal CSE agencies to develop and regulate performance standards, and to implement requirements for performance standards as an important element in Tribal CSE programs. As part of that process, we plan to define the relationship between performance standards and funding.

As we develop performance standards for Tribal CSE programs, we will look to our experience in establishing performance standards for State IV–D programs. We developed these standards over several years, in cooperation with States. After enactment of the Government Performance and Results Act of 1993, which requires Federal programs to set goals and measure results by establishing strategic plans, OCSE and States worked together to develop the National Child Support Enforcement Strategic Plan. The plan includes goals for States' IV–D programs and provides the foundation for building a results-oriented framework for these programs. Since the plan's completion in 1995, OCSE and States have worked together to develop specific performance indicators and related performance standards to be used to measure the IV–D program's success in achieving its goals.

Beyond strategic planning, the use of these performance indicators has evolved, and they now serve as the basis for a performance-based incentive and penalty system for State child support programs. For purposes of incentives, States will be measured on their performance levels in the following areas: Paternity establishment; establishment of support orders; collections for current support; case collections for child support arrearages; and cost-effectiveness. With respect to performance penalties, there is a statutory penalty for paternity establishment and the Secretary has authority to regulate additional performance penalties. We believe that these performance measures are essential for ensuring that States are held accountable for maintaining efficient and effective child support services for children. We have shifted to this outcome-oriented approach to child support enforcement program accountability in seeking to balance the Federal government's oversight responsibility with States' responsibility for child support service delivery and fiscal accountability. This system allows us to measure and reward or sanction State performance in terms of outcomes for children, replacing a system that for years focused only on process.

In developing performance standards for Tribal CSE programs, we are committed to working closely with Tribes—as we worked closely with States—to develop performance standards that measure accomplishments in meeting the basic functional requirements of Tribal CSE programs. As discussed above, we consulted extensively with State IV–D programs to reach consensus on performance measures, and we intend to carry out a similar process with Tribes. We are specifically seeking comments on our approach for developing

performance standards for Tribal CSE programs.

In proposed paragraph (b), if a Tribe or Tribal organization is unable to satisfy any or all of the requirements specified in paragraph (a), it may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE program development plan detailing: (1) With respect to each requirement in paragraph (a) that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement, and (2) with respect to each requirement in paragraph (a) that the Tribe or Tribal organization does not currently meet, the specific steps the Tribe or Tribal organization will take to come into compliance and the time frame associated with each step.

The Tribal CSE program development plan must demonstrate to the satisfaction of the Secretary or designee that the Tribe or Tribal organization will have in place a Tribal CSE program that will meet the requirements outlined in paragraph (a), within a reasonable, specific period of time, not to exceed two years.

The program development plan should follow the same general format as a Tribal CSE plan submitted under § 309.65(a). The program development plan should address each element listed in § 309.65(a). For those functions that a Tribe or Tribal organization already performs, the program development plan should contain the same information that we require for a Tribal CSE plan. For those functions that a Tribe or Tribal organization currently does not perform, or does not perform consistent with the proposed regulation, the program development plan must include a description of how the Tribe or Tribal organization anticipates performing this function in order to meet the requirements of this part, the process the Tribe or Tribal organization will follow to achieve this, the milestones that the Tribe or Tribal organization will use to mark progress toward being capable of performing this function, and the schedule for meeting those milestones. In some cases, a Tribe or Tribal organization may not know, when it applies, exactly how it will perform one or more required functions. In that case, rather than describing how the Tribe or Tribal organization will perform the function, the program development plan should describe the process the Tribe or Tribal organization will use to make this decision, along with milestones and a schedule for this process.

We recognize that some Tribal CSE agencies may need Federal funding to move toward a completely operational program and believe that many Tribes and Tribal organizations not currently operating child support programs are capable of doing so. Section 309.150 of the proposed rule provides for ''start-up'' funds to allow Tribes and Tribal organizations which have the basic governmental and administrative capabilities necessary to run a child support program, to put in place over time a program meeting the requirements of section 455(f) and this regulation.

The statute provides that a Tribe or Tribal organization must demonstrate that it is capable of running a child support enforcement program. We have interpreted this to allow for a reasonable amount of time and a reasonable amount of Federal funding to establish a program.

Before providing CSE start-up funding, we plan to ensure that a Tribe or Tribal organization has the basic governmental and administrative functions in place that are necessary to support a CSE program. This includes such things as an effective accounting system and experience in successfully managing other service programs. We would view Tribes with these elements in place as capable of running a Tribal CSE program when they apply for start-up funding in accordance with the requirements of § 309.65(b). We will provide start-up funding to Tribes and Tribal organizations whose applications demonstrate the reasonable expectation that they will be ready within two years to operate a full, comprehensive CSE program.

However, we do not believe that Congress intended the Department to fund start-up activities for an extended period of time or without regard to the amount of resources devoted to starting a Tribal program. Accordingly, we have proposed to limit start-up funding to an amount not to exceed a total of $500,000 in Federal funds for two years (except for Tribes and Tribal organizations that receive a waiver of the non-Federal share requirement under § 309.130(d)). Based on the experience of Tribes of varying sizes and circumstances that have started CSE programs, we believe that this amount of time and funding will enable Tribes and Tribal organizations to pay reasonable and necessary costs to complete start-up activities. For example, during year one, a Tribe might recruit, hire and begin to train its CSE program staff, and develop the necessary Tribal codes to operate a Tribal CSE program. Then, in year two, the Tribe could develop CSE systems and procedures, enter into cooperative arrangements with State(s) and other local Tribal CSE agencies for the provision of child support enforcement services and reach agreements to satisfy any remaining requirements for the Tribe to operate its own child support enforcement program. We believe that, except in unusual cases, if a Tribe or Tribal organization needs more than $500,000 in Federal funding or more than two years to begin a CSE program, the Tribe or organization would not be capable at this point of starting a CSE program. In extraordinary circumstances (for example, a Tribe had encountered unexpected delays in establishing its CSE program and was almost ready to begin operating a full CSE program at the end of year two), HHS would consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization and/or increasing the amount of start-up funding provided. Our presumption is that in very few cases would the start-up time period be extended or the start-up funding be increased.

We request comments on the appropriate length and maximum amount of start-up funding.

In paragraph (c), we propose that the Secretary or designee will cease funding a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified.

The Secretary or designee will make every effort to provide assistance to Tribal CSE agencies to meet milestones and to put in place full programs pursuant to § 309.65(a). We anticipate providing extensive technical assistance to Tribes receiving start-up funding to help assure that they develop full CSE programs within two years. We anticipate extensive communication (including Tribal submission of required reports) with these Tribes, so we will know how they are progressing and can increase technical assistance as needed.

We will treat seriously failure to meet critical milestones or to report promptly and fully on progress toward meeting milestones pursuant to § 309.65(b). The Secretary will cease funding a Tribal CSE agency's start-up efforts if that agency fails to demonstrate satisfactory progress toward putting a full program in place. The Secretary or designee will

base this determination on the milestones contained in the Tribal CSE agency's program development plan and its progress reports, pursuant to §§ 309.15(b)(2) and 309.25(d), supplemented by Tribal audits and OCSE reviews. A Tribe or Tribal organization that the Secretary proposes to terminate will be able to ask for reconsideration of the Secretary's decision following the procedures in § 309.45 of this regulation. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified, regardless of whether it has asked for reconsideration under § 309.45. However, our expectation is that only two full years of start-up funding in total will be provided to any Tribe, unless the Tribe can show extraordinary circumstances that indicate additional time is warranted (for example, if a Tribe faced a natural disaster).

When a Tribe or Tribal organization successfully completes its start-up funding period, it would submit an application to operate a full CSE program consistent with the requirements in § 309.65(a).

PRWORA made a number of important new enforcement tools available to child support agencies. PRWORA expanded the Federal Parent Locator Service (FPLS) which includes the National Directory of New Hires (NDNH), containing information from New Hire, Quarterly Wages and Unemployment Insurance Compensation reporting; and the Federal Case Registry (FCR), containing data about child support cases throughout the United States. In addition, the Federal Income Tax Refund Offset Program has proven to be a valuable means of collecting child support. We believe that Tribes and Tribal organizations' use of these tools will greatly improve the effectiveness of their child support enforcement programs.

Therefore, we are proposing to require that Tribes and Tribal organizations participate in or make use of the expanded FPLS (new hire reporting, quarterly wage reporting, NDNH and the FCR) and the Federal Income Tax Refund Offset Program to the extent possible or permitted under current law and in accordance with instructions issued by the Secretary or designee.

However, we are proposing to delay the effective date of this requirement until such time as the Secretary or designee issues guidance outlining the necessary procedures to comply with these requirements and to ensure that all Tribes and Tribal organizations have at least two years to put these mechanisms in place.

In proposed paragraph (d), no later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a), or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with proposed paragraph (d)(1) through (5), whichever is later, a Tribal CSE plan must include requirements outlined in paragraphs (d)(1) through (5).

Within two years of the date that the Secretary approves a Tribe's or Tribal organization's plan under paragraph (a), or the issuance of guidance outlining the procedures to comply with the proposed requirements of paragraph (d), the Tribe must have in place procedures meeting those requirements. A Tribe or Tribal organization that applies initially under paragraph (b) will have up to two years to develop a program that meets the requirements of paragraph (a), Once it meets the requirements of paragraph (a), it will have an additional two years (or two years from the issuance of guidance outlining the necessary procedures to meet the requirements of (d)) to comply with paragraph (d).

The delayed effective date of this requirement does not preclude a Tribe or Tribal organization from utilizing these tools earlier. However, at the present time the only method for doing so would be through a cooperative arrangement with a State. We are committed to providing Tribes with direct access to these mechanisms and we are working to put in place the necessary processes for doing so. If our efforts are delayed, we will delay the implementation deadline accordingly. We are specifically soliciting comments on both the two-year timeframe and for suggestions on how best to provide access.

We propose in paragraph (d)(1), that a Tribal CSE plan include procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(2), that a Tribal CSE plan include procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(3), that a Tribal CSE plan include procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(4), that a Tribal CSE plan include procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(5), that a Tribal CSE plan include procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

The three Federal interface requirements of new hire reporting to the Tribal CSE agency, reporting to the National Directory of New Hires (NDNH), and the submittal of cases to the Federal Case Registry (FCR), are similar to requirements recently met by State programs under mandates in PRWORA. These tools are important for enforcement of child support orders; early indications are that these tools are producing dramatic results.

The Federal Parent Locator Service (FPLS) is a computerized network through which child support agencies may request information from a variety of sources to find noncustodial parents and/or their income, assets or employers for purposes of establishing paternity and securing support. PRWORA required the development of an expanded FPLS to improve child support agencies' ability to locate child support obligors and to establish and enforce child support orders, as well as for other specified purposes in title IV–D of the Act. The expanded FPLS is housed in the Social Security Administration's National Computer Center. The National Computer Center possesses state-of-the-art standards for system security and data confidentiality.

The expanded FPLS includes the National Directory of New Hires (NDNH) and a Federal Case Registry (FCR) and maintains the capability to seek information from existing (*i.e.,* pre-PRWORA) FPLS data sources, including, but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense, and Department of Veterans Affairs. The expanded FPLS performs regular cross matches between the National Directory of New Hires and the Federal Case Registry.

The NDNH contains three types of information. First, the NDNH maintains employment data on newly hired employees (new hire reporting) submitted by State Directories of New

Hires and by Federal agencies. Second, the NDNH maintains quarterly wage information on individual employees, including Federal employees. Third, the NDNH maintains unemployment compensation claims data. States are required to transmit new hire, quarterly wage and unemployment compensation claims data electronically to the NDNH. As Tribes and Tribal organizations begin to operate their own child support enforcement programs under section 455(f) of the Act, the NDNH will include information submitted by them, as well.

The purpose of the NDNH is to maintain a repository of information on newly hired employees, and on the earnings and unemployment compensation claims data of employees. The purpose of including quarterly wage and unemployment compensation claims data in the NDNH is to provide child support agencies with the ability to quickly locate information on the address of, employment of, and unemployment compensation being paid to parents with child support obligations who are residing or working in other States. Child support agencies seek to locate these parents and their employers to establish or enforce a child support order. Quarterly wage and unemployment compensation claims data provide information on continuously employed and unemployed individuals who would not be located solely by new hire reporting.

The Federal Case Registry (FCR) is a national registry of individuals involved in child support cases, constructed from abstracts of child support case and order information that child support agencies transmit to the FCR. The FPLS, through a matching process between NDNH and the Federal Case Registry, is able to automatically provide child support agencies with information on address, employment and unemployment compensation claims data on parents owing child support. Through internal FCR matching, the FPLS alerts child support agencies about other jurisdictions that have cases on the same individual.

However, the FPLS is designed around fixed network connections utilizing direct mainframe to mainframe data transmissions. OCSE is looking into alternative mechanisms that would provide Tribes and Tribal organizations with communications capabilities and cost-effective access to FPLS.

As mentioned in an earlier section of the preamble, the issue of access to the FPLS was raised during consultation. There is no legal impediment to Tribes and Tribal organizations that receive direct funding under section 455(f) of the Act from participating in the FPLS. Access to the FPLS by Tribes and Tribal organizations requires some degree of automation in that the FPLS is designed to operate using electronically transmitted requests, and Tribes and Tribal organizations would be required to communicate their requests to, and receive responses from, the FPLS electronically. While the FPLS currently accepts limited types of physical media, *e.g.,* Reel Tapes, Cartridge, this is rapidly changing to electronic transmissions only. The FPLS production systems are being programmed to handle only electronically transmitted files over OCSE's established networks. This is currently how the Federal Case Registry (FCR) and National Directory of New Hires (NDNH) are programmed. Programming for requests made outside of the electronic network is not planned.

The FPLS supports Federal to State, State to Federal, and State to State transmissions. There are currently two separate networks used for hosting FPLS child support transactions. The first network is SSA's File Transfer Management System (FTMS), which utilizes closed data lines via FTS2000 (generally 56kb lines or less) and a proprietary protocol (Connect: Direct) for file transfers. This network supports Federal to State and State to Federal file transfers. (SSA will not support an expansion of this network.) The second network used is the Child Support Enforcement Network (CSENet). CSENet supports State to State transmissions where the Federal host system is used to route the transmission from and to their destinations. This network is currently being upgraded and uses Frame Relay services through AT&T and the minimum connection is at 56kb.

The existing FPLS networks are fixed networks located at State sites and may not be suited for communication beyond their current configuration. Tribes and Tribal organizations that wish to utilize the FPLS before the effective date of the Federal interface requirements could choose to enter into cooperative arrangements with State IV-D agencies to process requests/responses to and from the FPLS.

The degree of automation necessary to meet most child support functionality is similar if not equivalent to State level child support systems. Many of the State level child support system functions interface directly with the FCR, NDNH, Federal Income Tax Refund Offset and other components of the FPLS. Therefore, State and Federal system automation and interfaces are closely developed and closely linked. While OCSE is very familiar with the functionality contained in State systems and the degree of sophistication of those systems, it has no similar experience with automation at the Tribal level. Therefore, it will be important that OCSE determine the level of technical capabilities at the Tribal level and the technical requirements for a Tribal interface directly with OCSE for FPLS exchanges. Until this is done, it would be conjecture as to the best method of communicating with the Tribes and Tribal organizations and providing direct access to the FPLS. We are specifically soliciting comments and suggestions from Tribes and Tribal organizations on programs that would facilitate access. We are also soliciting comments about resources needed, such as staff, equipment, development of procedures, policy, costs, interagency agreements and estimated caseload. Without information about the current status of various Tribal child support computer systems, it would be difficult to accurately plan a schedule for implementation of Tribal access to the FPLS.

After the initial Tribal system assessment, consideration will be given to establishing a direct interface with the FPLS. Because it does not appear feasible to utilize existing networks for communication with the Tribes and Tribal organizations, alternative methods will need to be considered. There are several approaches that could be pursued, such as: The Internet or Virtual Private Networks (VPN). These alternatives, along with others may provide a practical means of communication. Additionally, Tribes and Tribal organizations would be expected to meet all the transaction specifications required of State systems necessary to process their requests. These specifications are technically complex and will require comprehensive automation and technical expertise to support compliance. It may take Tribes and Tribal organizations several years to develop the necessary automation to meet the automation and communication requirements.

The Federal Income Tax Refund Offset Program was established by Congress (Pub. L. 97–35) in 1981 and enforces delinquent child support obligations by intercepting part or all of an obligor's Federal income tax refund. This Federal collection mechanism involves the interaction of all State IV–D agencies and three Federal agencies (OCSE, the Treasury Department's Financial Management Service, and the Internal Revenue Service).

The Internal Revenue Code at 26 U.S.C 6402(c) does not currently allow Tribes to have direct access to the

Federal Income Tax Refund Offset process. Under current law, Tribal CSE cases may be processed under the Federal Income Tax Refund Offset Program provided there is an application to the State IV–D agency for appropriate services. In such cases, Tribes and States may negotiate arrangements under which individual applications for services would be sent to the State IV–D agency and the Tribal CSE agency would provide the State agency with the information and records necessary to process such cases for income tax refund offset. Under these negotiated arrangements, States would provide appropriate services consistent with section 454(4) of the Act. OCSE will issue instructions regarding these arrangements.

As discussed earlier in this preamble, § 309.10 proposes that, in order for a Tribe or Tribal organization to receive Tribal CSE funding, there must be at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing a Tribal organization to operate a CSE program on their behalf, subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies). In paragraph (e) of § 309.65, we propose that, in the initial plan and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must confirm its eligibility for direct Tribal CSE funding by certifying that, as of the date the plan or plan amendment is submitted to the Department, the Tribe or Tribal organization meets this minimum population requirement.

What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.70)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes. As mentioned earlier, we are requiring a minimum of 100 children under the age of majority as defined by Tribal law or code in the population under the jurisdiction of the Tribe or Tribes to be served in order to apply for and receive direct funding.

What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.75)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements.

In paragraph (a), we propose that the plan include a description of the structure of the agency and the distribution of responsibilities within the agency. This includes the responsibility for the functions of establishing a plan, overseeing operation of the program and evaluating the efficiency and effectiveness of the program, preparing required reports and receiving, distributing, disbursing and accounting for collections. The plan should include the proposed staffing levels for delivery of necessary services, including: intake, establishing support obligations, locate, financial assessment, enforcement, distribution and collection, program management and financial management.

Many Tribes and Tribal organizations applying for grants under other programs will be familiar with the inclusion of management and administrative capacity to operate the program in their applications. This includes evidence of the Tribe's and Tribal organization's ability to operate the program. The plan will outline the management and administrative capabilities of the Tribal CSE agency, including position descriptions of key personnel and related staffing information.

In paragraph (b), we propose that a plan include procedures under which applications for Tribal CSE services are made available to the public upon request.

In paragraph (c), we propose the plan include procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action. The purpose of this provision is to avoid a delay in getting needed services to the children.

In paragraph (d), we propose that the Tribal plan must contain procedures to control the use of and account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person, who has access to or control over funds collected under the Tribal CSE program, is covered by a bond against loss resulting from employee dishonesty.

(2) The requirement in paragraph (d) applies to every person, who as a regular part of his or her employment, receives, disburses, handles or has access to support collections.

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collection from the Tribal CSE agency's program.

(4) A Tribe may comply with the requirement in paragraph (d) by means of self-bonding established under Tribal law and approved by the Secretary or designee.

In paragraph (e), we propose that the plan include procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

In paragraph (f), we propose that the plan include certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133. (The single agency audit requirements are included in the grants administration requirements at 45 CFR 92.26, which include OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'') Tribes and Tribal organizations that receive grants from other programs are familiar with this requirement, as it pertains to most Federal grant-in-aid funding.

What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.80)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program when its Tribal CSE plan includes specific safeguarding provisions. We are proposing that Tribes and Tribal organizations be required to include in their Tribal CSE plan a description of how they propose to safeguard information collected for the purposes of their Tribal CSE program. Because of concerns raised during consultation and privacy issues concerning child support and tax information, this requirement for safeguarding information was added to protect both the Tribe's own information and data and information

and data received from other Tribes, States and the Federal government.

In proposed paragraph (a), there must be procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or other programs or purposes prescribed by the Secretary.

In proposed paragraph (b), Tribal CSE safeguarding procedures must be consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

In paragraph (c), we propose that the plan include procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.85)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes procedures for maintaining certain records.

In proposed paragraph (a), the Tribal CSE agency would be required to maintain records necessary for proper and efficient operation of the program including:

(1) Applications for support services;

(2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal and other records necessary for reporting and accountability required by the Secretary or designee.

In paragraph (b), we propose that the retention and custodial requirements for these records are prescribed in 45 CFR part 92.

Maintenance of records is an important aspect in running a child support program and accountability to the Federal government and those receiving services. The requirement to maintain these records will enhance the program, in that reporting will be easier and the Tribal CSE agency will be able to track the progress and growth of the program.

What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.90)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes copies of Tribal law, code, regulations, and/or other evidence that provides the following specific procedures:

In paragraph (a), we propose that the plan include procedures that result in the establishment of paternity for any child up to and including at least 18 years of age.

Age 18 is used only in terms of establishing a child support order. This has no bearing on Tribal enrollment, Tribal membership or Tribal rights. This imposes no Federal requirement relating to Tribal membership.

In paragraph (b), we propose that the plan include procedures that result in establishment and modification of child support obligations.

In paragraph (c), we propose that the plan include procedures that result in the enforcement of child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110.

In paragraph (d), we propose that the plan include procedures that result in location of noncustodial parents.

In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary.

We understand that some Tribes may not have written laws in these areas. In that case, the Tribe must include in its plan a written description of the procedures and criteria it employs to establish paternity, establish and modify support orders, or to enforce support obligations. During consultation, questions concerning specific State enforcement techniques were raised. A Tribe or Tribal organization is not prohibited from using all or some of the enforcement tools that States are required to use. However, some of these may not be appropriate enforcement tools for Tribes and Tribal organizations, especially for CSE programs that are in the early stages of development.

One example is license revocation for enforcement of support orders. This includes driver's, professional, occupational, and recreational licenses of individuals who owe overdue support, or who fail to comply with subpoenas or warrants relating to paternity or support proceedings. We are aware that not all Tribes issue licenses of the type a State is required to revoke. We do not have a comprehensive list of licenses issued by each Tribe. Therefore, the use/application of this technique is left to the discretion of the Tribe or Tribal organization. This is a fairly new requirement for State programs, and we have elected not to require it in the NPRM because Tribal CSE programs are in the early stages of development.

However, one specific enforcement technique is required for Tribal CSE programs: income withholding as described in § 309.110 and discussed later in this preamble. Income withholding is deemed critical to successful child support enforcement efforts and accounts for over 50 percent of all collections in State IV–D programs.

Some enforcement techniques that a Tribe or Tribal organization may wish to use will require the cooperation of a State. For example, States are required to revoke certain professional licenses if a parent is overdue on his or her support obligation. Some of these licenses may be issued by a State. If a Tribe or Tribal organization wants to use this tool, it must request that the State revoke the license.

Many enforcement requirements were added to State IV–D programs over time, including requirements for State tax refund offset and for reporting child support arrearages to credit bureaus. We will provide information to Tribal CSE programs on enforcement tools currently available. These tools provide increased potential for enforcing support orders and are often helpful in the most egregious cases of unpaid support. While we do not expect Tribes to use all available tools immediately, we would strongly encourage Tribes to consider an array of enforcement mechanisms to best serve their families and expect more use as Tribes gain experience.

This proposed rule requires that Tribal plans explain how the Tribe or Tribal organization will carry out specific CSE requirements, including the enforcement tools the Tribe or organization will use, as well as requiring use of income withholding. We will provide information and technical assistance to Tribal programs on use of additional enforcement tools.

We are requesting copies of all Tribal laws and regulations that outline the specific procedures for establishment of paternity; establishing and modifying child support obligations; enforcing child support obligations and locating noncustodial parents. The Tribal plan must contain enough information so that the Secretary can determine that appropriate Tribal laws, regulations and procedures are in place to ensure paternity and support order establishment and enforcement of support obligations as required under section 455(f) of the Act and these regulations.

What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.95)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents.

Under proposed paragraph (a), in all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case.

Under proposed paragraph (b), all sources of information and records available to the Tribe or Tribal organization must be used to locate noncustodial parents. As defined in § 309.05, location means the information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), or other source of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

A Tribe or Tribal organization may wish to establish a Parent Locator Service, similar to the Parent Locator Services established by States. The locator service may utilize a variety of sources, ranging from manual to electronic processes for location of a noncustodial parent. These tools may include: Local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services; relatives and friends of the noncustodial parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records and other sources, as appropriate.

What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.100)

In paragraph (a), we propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures for the establishment of paternity included in this section. In cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

We will examine the Tribe's procedures to ensure that the objectives of title IV–D are met, paternity is established, due process rights are protected, and the children in need of child support services receive those services consistent with the requirements of these regulations.

In paragraph (b), we propose that the Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity in this case.

In paragraph (c), we propose that when genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

The proposed requirements in paragraphs (b) and (c) are based on similar requirements for State IV–D agencies.

During consultation with Tribes, the issue of establishing paternity was troublesome for a number of reasons. Some Tribes do not use the methods of establishing paternity that are widely used in State programs. In some instances, Tribal leaders establish paternity. Concerns were raised about religious and ethical objections to genetic testing for establishing paternity, and about using non-Tribal laboratories for genetic testing. In some Tribes, the question of paternity is not as important, because the Tribes are matrilineal. In others, paternity may enter into issues concerning Tribal membership and other rights and entitlements. We are generally providing Tribal CSE agencies discretion on how to establish paternity.

We believe that current genetic testing technology provides the most accurate means to determine the father or exclude the alleged father, and that involved individuals therefore should have the opportunity to request use of this technology. We also believe that an alleged father who questions whether he is the father of a child will be more likely to accept the child as his if genetic testing determines that he is the father.

We believe that recent advances in genetic testing technology address concerns that some may have about this method. Genetic testing is now painless and minimally invasive. Swabs are used to obtain cells from the inside cheek surface; blood is not drawn. There are highly accurate results based on comparison of DNA from the child, the mother, and the alleged father.

As noted, we propose to require use of accredited laboratories when genetic testing is used, to assure the most accurate results possible. Tribes should put safeguards in place to assure that genetic (or blood) samples are used only as directed by the Tribe. In their agreements with the accredited laboratories they choose, they can require that all samples must be used only for the specified paternity establishment and must be destroyed within a specified period of time. They also can use tribally-owned accredited laboratories.

We request comments regarding paternity establishment, including specific comments concerning the best way to assure due process for involved individuals while respecting Tribal tradition.

What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.105)

In paragraph (a), we propose that a Tribe or Tribal organization

demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the requirements listed below.

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

The plan must describe how the Tribe or Tribal organization will determine a support amount and establish a support order. It must describe any Tribal provisions for in-kind support payments; the process to track in-kind support payments; and the process for translating the in-kind amount to a dollar amount, should the obligor move and services are no longer provided by the Tribal CSE agency.

During consultation, Tribes stressed repeatedly that it may be economically and culturally acceptable for noncustodial parents to provide in-kind child support. Examples of in-kind child support include, but are not limited to, child care, game (e.g., deer or fish from hunting and fishing), firewood, or time spent with the child teaching him or her traditional and cultural ways. A variety of in-kind options are allowable at the Tribe or Tribal organization's discretion.

In paragraph (b), we propose that the guidelines established under paragraph (a) at a minimum must: (1) Take into account the needs of the child and the earnings of the noncustodial parent; and (2) be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

As mentioned above, the child support guidelines are guidelines established by law or judicial or administrative action. The purpose of the guidelines is to establish child support orders based upon the financial circumstances of the noncustodial parent and the needs of the child. Use of the guidelines is required for establishing child support obligations. The ''specific descriptive criteria'' must include consideration of the noncustodial parent's earnings and the child's needs, and may include consideration of such things as the custodial parent's earnings, credit for child care expenses; medical expenses; seasonal employment of the noncustodial parent; and any other appropriate criteria.

In paragraph (c), we propose that the Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

In paragraph (d), we propose that the Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

In paragraph (e), we propose that a written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. In the interest of flexibility for Tribal CSE programs and comparability with State IV–D requirements, we included the provision for deviation from the established child support guidelines.

What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.110)

In proposed paragraph (a), a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws providing for the following income withholding requirements.

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

Income is defined in section 466(b)(8) of the Act as ''* * * any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.'' Tribes may add other elements to this definition of income for the purposes of income withholding. Tribes may want to include allotment payments in the definition of income for withholding purposes. Tribes may also want to define winnings from gaming as income subject to withholding. Tribes have the discretion to determine whether to include winnings from gaming, allotment payments and other additional sources of income in the definition of income.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

The provision of the Consumer Credit Protection Act (CCPA) at 15 U.S.C. 1673(b) sets outside limitations on amounts that may be withheld for child support enforcement purposes. If an employee is supporting his/her spouse or dependent child, other than a spouse or child referenced in the income withholding order, 50 percent of disposable earnings may be withheld. If the employee is not supporting such a spouse or dependent child, 60 percent of the disposable earnings may be withheld. These limits increase to 55 percent and 65 percent if the employee is 12 or more weeks in arrears.

A Tribe or Tribal organization may wish to set different limits. The limit set by a Tribe or Tribal organization may be lower, but may not be higher than the limit set forth in the CCPA. Some States have opted for lower limits, such as 50 percent, on income withholdings.

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts, which have been improperly withheld.

This provision protects the noncustodial parent from incorrect or inaccurate withholdings that could occur, and ensures that procedures are in place to refund amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for

support and all arrearages have been satisfied.

In paragraph (b), we propose that to initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal format that includes the information listed below.

(1) The amount to be withheld.

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid.

(3) That the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income.

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted.

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe.

(6) A requirement that if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

The form Order/Notice to Withhold Income for Child Support (OMB No. 0970–0154) is required in all IV–D cases and in private cases established after January 1, 1994 for income withholding. The form includes basic identifying information, what amount needs to be withheld, and where payments must be remitted.

In paragraph (c), we propose that the income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

In the State IV–D program, there are provisions for immediate income withholding. This means that the income withholding is mandatory when the noncustodial parent is employed. We contemplated using this same provision for the Tribal CSE program, but we were concerned that it would be difficult for Tribes and Tribal organizations operating a program to meet such a requirement in all cases. For that reason, we are specifically soliciting comments on this aspect of income withholding.

In paragraph (d), we propose that the only basis for contesting a withholding is a mistake of fact, which for purposes of this section means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

In paragraph (e), we propose that the provisions of this section do not apply to that portion of a support obligation that may be satisfied in kind.

In paragraph (f), we propose that Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

Income withholding is the single most effective tool for collecting child support from noncustodial parents. Income withholding provides a steady income stream to the custodial parent. This procedure accounted for 55.8 percent of all collections made in FY 1998. We believe that Tribes will find that this is a very effective tool for child support enforcement.

What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.115)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal plan includes the provisions listed below.

Under proposed paragraph (a), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act.

Under proposed paragraph (b), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act.

Under paragraph (c), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe. Thus, in distributing support collected on behalf of a family who has assigned support rights to the Tribe, the Tribe would have the option of retaining such support for reimbursement of Tribal TANF benefits or of passing through support collected in whole or in part to the family to help the family move to self-sufficiency. However, as specified under 45 CFR 286.155(b)(1) of the Tribal TANF rules, any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family.

Under proposed paragraph (d), in cases where families receiving services from the Tribal CSE program formerly assigned support rights to the Tribe as a condition of receiving Tribal TANF assistance, the Tribe may retain amounts collected above current support as reimbursement for past assistance payments made to the family for which the Tribe has not been reimbursed. While this is a Tribal option, we would urge Tribes to consider the benefit of passing all support collected to families that are no longer receiving Tribal TANF as a vehicle for maintaining self-sufficiency.

A Tribe could not retain collections under this paragraph until all current support was paid to the family. As under paragraph (c), any collected child support in excess of the amount of unreimbursed Tribal TANF assistance must be paid to the family.

With respect to paragraphs (c) and (d), in developing proposed policy, we are considering requiring Tribes to distribute retained collections to the Tribe and the Federal government for reimbursement of the cost of providing assistance (similar to paragraphs (a) and (b) when there is an assignment to the State) at a 90/10 match rate (reflecting the general rate of cost-sharing). An alternative would have been to allow the Tribe to retain all collections or a greater proportion of the collections, but this approach raised significant issues as well. In addressing this policy, we ask commenters to consider the range of complex issues involved in distribution in these cases, including the following: Given the lack of statutory guidance in this area, is there a justifiable alternative to the 90/10 rate? How would distribution work when a Tribal order was based on in-kind support by the noncustodial parent? We encourage your comments on this approach to distribution policy and the number of complex issues needing to be addressed. We are also interested in learning more about the potential impact on families

and on Tribes with respect to any of these issues.

Under proposed paragraph (e), in cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

Concerns were raised during the consultations with respect to distribution of child support collections. OCSE has addressed these concerns in Action Transmittal OCSE–98–21, dated July 28, 1998. Title IV–D contains explicit requirements for distribution of support collected, including support assigned to a State under title IV–A of the Act. In cases where Indian families are receiving TANF assistance under title IV–A from the State, support must be distributed pursuant to section 457(a)(1) of the Act. The Tribal CSE agency must forward all collections to the State IV–D agency. The State must pay to the Federal government the Federal share of the amount collected and may retain or distribute to the family the State share of the amount collected.

However, if as a condition of eligibility for Tribal TANF, an Indian applicant assigns his/her right to support to the Tribe, such an assignment may be honored by a State IV–D program providing services to the Tribal TANF family and support collected distributed accordingly, to the Tribal TANF agency. However, there is nothing under Federal law that mandates a State honor a request by a custodial parent to send support collected to anyone other than the custodial parent. Should assignments exist to both the Tribe and State because of current and/or past assistance under title IV–A being provided to the family, amounts collected must be distributed in a way that is consistent with section 457 of the Act and these regulations.

In cases where Indian families never received title IV–A assistance, all collected support must be paid to the family, consistent with section 457(a)(3) of the Act.

What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.120)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes those items listed below.

In paragraph (a), we propose the plan include procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee.

In paragraph (b), we propose the plan include assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

As discussed earlier in the preamble, under the Full Faith and Credit for Child Support Orders Act, States are required to reciprocate and recognize Tribal orders. In addition, all States have enacted the Uniform Interstate Family Support Act (UIFSA). This model statute provides that, as a matter of State law, States will treat Indian Tribes in the same manner as they treat other States when handling child support cases involving other jurisdictions. OCSE is developing regulations to specifically address the issue of State cooperation with Tribal CSE programs, possibly as part of the revisions to the regulations at 45 CFR 302.36, Provision of Services in Interstate IV–D Cases.

We considered adding a requirement that Tribes enact the UIFSA or similar legislation. However, we were reluctant to impose a requirement with the specificity contained in UIFSA. We are specifically soliciting comments on whether this model statute or similar model legislation written specifically for Tribes would be helpful.

We will be working with Tribes and States to determine the appropriate requirements for cooperation between Tribes and States. We will also be working to identify technical assistance to ensure child support services for children whose parents live on or off Tribal land. The intent is to ensure that both States and Tribes are covered by requirements as appropriate. The Secretary or designee will issue additional guidance.

Subpart D-Tribal CSE Program Funding

On what basis is Federal funding in Tribal CSE programs determined? (section 309.125)

We propose that Federal funding of Tribal CSE programs be based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and assurance that the program will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part and other official issuances of the Department.

How will Tribal CSE programs be funded? (section 309.130)

In paragraph (a), we propose that Tribal CSE programs generally will be funded on an annual basis. A Tribe or Tribal organization running a Tribal CSE program will receive a grant at the beginning of that Tribe or Tribal organization's program year or budget period in the amount of the approved Federal share, to fund the Tribe or Tribal organization's program for the next 12 months. (As noted in subpart B, a Tribal CSE agency must have submitted an application, including a Tribal CSE plan and application forms, and the Department must have approved that application in order for a Tribal CSE agency to be eligible for direct funding.) In this discussion, we use the term ''program'' to include those activities associated with putting a Tribal CSE program in place, for example, ''start-up costs,'' as well as those activities associated with running a fully functional CSE program.

We want to give a Tribe or Tribal organization as much flexibility as possible in selecting the 12-month funding cycle that is easiest for it to administer. We also want a Tribe or Tribal organization to be able to submit its initial application at any time that it is ready to do so, irrespective of its preferred funding cycle.

In order to make that possible, paragraph (b) proposes a special provision for an initial grant. We propose that a Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than a year (but not to exceed 17 months) to enable the Tribe's CSE program funding cycle to coincide with the Tribe's desired annual funding.

For example, a Tribe or Tribal organization whose fiscal year runs from July 1 to June 30 may want its CSE program funding cycle to coincide with its fiscal year. However, the Tribe or Tribal organization may be ready to start its program on February 1. In that case, we could issue the initial grant award to allow the Tribe or Tribal organization to begin its program on February 1, after the Secretary approves the Tribe or Tribal organization's funding application. That initial grant period would run from February 1 of the current year to June 30 of the following year, that is, for 17 months. For the years after this first budget period, funding would be on a 12-month basis, from July 1 to June 30 for this Tribe or Tribal organization.

During the consultation process, we received many questions about how the funding level for each Tribe would be set, what formula would be used, whether we would be making per capita grants, whether Tribes and States would have to negotiate Tribal funding levels, etc.

In paragraph (c), we propose that the Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs for reasonable, necessary and allocable costs to operate its Tribal CSE program based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information—Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. Forms 424 and 424A are part of the initial application, as well as part of annual refunding applications.

Unlike many other ACF Tribal programs, the Tribal CSE program does not have a statutory funding formula or a specific or fixed amount to be set aside for Tribal CSE grants. Instead, as is the case for approved State CSE programs, funding is available as needed in order to pay reasonable and necessary costs of operating approved Tribal CSE programs.

Also, unlike the funding for many other ACF Tribal programs, the funding for Tribal CSE activities is completely separate from funding for State programs. Thus, a Tribe's decision to run its own CSE program does not impact a State's CSE program funds. Tribal CSE funding is not apportioned from a State's funding.

We considered a number of funding options for this NPRM. For example, we considered basing funding on the Tribe or Tribal organization's performance in collecting child support and cost effectiveness in administering a CSE program. We also contemplated basing funding on cost per child to operate a child support enforcement program. However, given that the vast majority of Tribes will be developing new programs, we do not yet have adequate information or experience to determine appropriate performance and cost effectiveness standards.

We considered setting a cap on certain costs within the Tribal CSE programs. We discussed setting a cap on indirect costs that could be paid from the CSE grant funds. However, indirect cost rates should be implemented as negotiated. We considered setting a cap on court costs, but because of our limited knowledge of Tribal court costs and the difference among Tribal courts, we decided this would not be appropriate at this time. We considered determining the amount of Tribal funding based on State IV–D expenditures. We concluded that costs for State programs that have been operating for over twenty years, and costs for new Tribal programs for Tribes of varying sizes and circumstances, are not directly comparable.

After considering many options, we decided to propose a 90/10 funding formula for the first three years of operation of a full Tribal CSE program under § 309.65(a) encompassing a matching requirement to ensure that Tribes and Tribal organizations have a stake in their CSE programs. Therefore, § 309.130(d)(1) proposes that during the first 3 years of operation of a full Tribal CSE program under § 309.65(a), HHS provide an amount not to exceed 90 percent of the total approved budget of the CSE program described in a Tribe or Tribal organization's approved application, and that the Tribe or Tribal organization must provide a non-Federal matching share of at least 10 percent of the total approved budget of the assisted program, in cash and/or in kind, in accordance with the requirements of 45 CFR part 92. Tribal grantees may provide a non-Federal (Tribal) share of greater than 10 percent of the costs of their CSE programs, at their option. After three years, the matching rate for the Federal government would be 80 percent and 20 percent for the Tribe. However, if the Secretary determines based on experience and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly.

States are required to provide a 34 percent cash match to the Federal 66 percent, in their CSE programs. Given the economic conditions and lack of a tax base for most Tribes, we are aware that a 34 percent match would be unreasonable for Tribes and Tribal organizations.

At the option of the Tribe or Tribal organization, the non-Federal match may be in cash and/or in kind. An example of a countable monetary match would be Tribal funds used to pay the salaries of staff operating the Tribal CSE program. An example of a countable in-kind match would be the fair value of tribally owned office space used for the Tribe's CSE program. Proposed paragraph (d)(1) also provides that bona fide third-party donated funds and in-kind contributions valued at fair market value may satisfy a Tribe or Tribal organization's non-Federal share requirement. For example, third-party donations of supplies and equipment used for allowable purposes in the Tribal CSE program generally could count as a match. However, ''donations'' that are quid pro quo or in consideration for Tribal actions, or that primarily benefit the donor, cannot be used to satisfy the requirement. For example, if a vendor agreed to donate funds or discount the cost of supplies, equipment and/or services to a Tribe if the vendor received a contract from the Tribe, this ''donation'' could not be used to satisfy the non-Federal share requirement.

To count as matching in a Tribal CSE program, expenditures must be allowable and cannot be claimed for matching in another Federal program or in another entity's CSE program.

In general, Federal funds cannot be used to satisfy the non-Federal share requirement. For example, services, such as technical assistance, provided to or by a Tribe would not be countable if Federal funds were used to pay for these services—to pay the person(s) who provided the services or to pay other costs associated with the services. As another example, a Tribe could not count as its matching requirement the value of an item donated by a State to the Tribe, if the State used Federal funds to purchase the item (in other words, if the State had claimed Federal financial participation for the same item under its CSE program).

However, there are limited circumstances under which funds from other Federal programs may be used as matching funds. Grantees may use funds from another Federal program only if the statute(s) applicable to that program permit their use to meet non-Federal matching requirements in other programs, the purposes of the two programs are consistent, and the funds have not been used to meet non-Federal matching requirements under any other Federal program(s). For example, a Tribe could not count Public Law 93–638 funds as matching funds in its Tribal CSE program if the purposes of the child support program and the program funded by the Public Law 93–638 funds were not consistent and/or if the Tribe was counting these funds as matching in another program.

We believe that some Tribes may not have sufficient resources to provide a 10 percent or 20 percent non-Federal matching share. Paragraph (d)(2) therefore proposes circumstances under which HHS would waive part or all of the matching requirement. A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent match would submit a waiver request that includes: (1) A statement that it lacks the available resources to meet the

matching requirement; (2) a statement of the amount of the non-Federal share that it requests HHS to waive; (3) the reasons that substantiate why it is unable to meet the matching requirement; and (4) documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful. Evidence of such efforts might include letters from possible sources of funding indicating that the requested resources are not available for this purpose, or approval of similar waivers of non-Federal share requirements in other Federal programs such as Head Start. When evaluating waiver requests from Tribal organizations, HHS will consider the resources of the organization as well as the resources of the Tribes on whose behalf the organization is administering the child support program. HHS could require more information and documentation as it determines necessary.

HHS would waive all or part of the non-Federal matching share, as appropriate, if it determines that a waiver request meets the conditions stated above. A waiver request would be submitted as part of the application for Tribal CSE funding, and waivers would be granted for the budget period for which the application is made. Waiver requests also could be submitted with budget amendment requests.

These non-Federal share matching and waiver provisions are modeled after similar provisions for the Administration for Native Americans and Head Start.

We are specifically seeking comments on our approach to the funding of Tribal CSE programs, including the proposed matching requirement.

In paragraph (e), we propose that a Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and SF 424A (Budget Information—Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment, in accordance with § 309.25(c) of this part, with its request for additional funding. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving additional funding.

The circumstances under which a Tribe or Tribal organization needs to send an application or plan amendment to OCSE are summarized below.

Initial Application: This will contain the SF 424—Application for Federal Assistance and SF 424A—Budget Information—Non-Construction Programs, plus the Tribal CSE agency's plan, as described in § 309.15 of these proposed rules. Tribal CSE agencies may submit the initial application at any time. The Tribal CSE agency will need to indicate on its initial application what 12-month budget period it prefers. The budget estimate for the initial application should be for a period ranging from six to 17 months, such that the end of the initial budget period is the same as the end of the Tribal CSE agency's preferred budget period. (An example of how this works was presented earlier in this preamble.)

Annual Refunding Application: The refunding application normally will contain only the SF 424—Application for Federal Assistance and SF 424A—Budget Information—Non-Construction Programs, unless the Tribal CSE agency is making changes to its plan or receives funding for start-up costs. If the Tribal CSE agency wants to make changes to its plan, it needs to submit those changes also, in a plan amendment. If it receives funding for start-up costs, it needs to include a program progress report on its CSE program activities and accomplishments during the current budget period. The refunding application is due to OCSE 60 days before the end of the Tribal CSE agency's current budget period. For example, if the Tribal CSE agency's initial grant expires on June 30, 2001, then the Tribal CSE agency should submit its refunding application for the period July 1, 2001 to June 30, 2002 to OCSE no later than April 30, 2001.

Application for Additional Funds, with Plan Amendment: A Tribal CSE agency should submit an as-needed application when it wants to make changes to its approved CSE plan during a budget period, and these changes result in a need for additional CSE funds during the budget period. These as-needed applications requesting a plan amendment and additional funds will contain: An SF–424—Application for Federal Assistance and an SF–424A—Budget Information—Non-Construction Programs reflecting the Tribal CSE agency's revised budget request for the current budget period; the plan amendment; and an explanation of the reasons the Tribal CSE agency needs the increase in funding. They should be submitted at least 60 days before the Tribe needs the additional funds.

Application for Additional Funds (without Plan Amendment): A Tribal CSE agency should submit an as-needed application when it identifies a need to change its current grant amount but does not need to change its plan. These as-needed applications requesting additional funds will contain an SF 424—Application for Federal Assistance, and an SF 424A—Budget Information—Non-Construction Programs, reflecting the Tribal CSE agency's revised budget request for the current budget period; and an explanation of the reasons the Tribal CSE agency needs the increase in funding. They should be submitted at least 60 days before the Tribal CSE agency needs the additional funds.

Plan Amendment (without Application for Additional Funds): As noted earlier in this preamble, if a Tribal CSE agency wants to change its plan without adjusting the grant amount, it should submit its plan amendment request when the change takes place, or in anticipation of the change.

Under paragraph (f), we propose that Tribes and Tribal organizations will obtain Federal funds by drawing them down from the Department's Payment Management System. The draw down of Federal grant funds is subject to the provisions of 45 CFR 92.20 and 92.21.

During consultation with Tribes, issues relating to access to grant funds were of major concern. Several participants in the consultation process expressed the desire that Tribes receive funding for Tribal CSE programs pursuant to Public Law 103–413, the Indian Self-Determination Act Amendments of 1994, which amends Public Law 93–638, the Indian Self-Determination and Education Assistance Act. Basically, this would allow a Tribal CSE agency to receive a lump sum payment at the beginning of the budget period by drawing down the entire funding amount from the U.S. Treasury soon after issuance of the grant award. This would allow a Tribal CSE agency to earn interest on the funds until it used them later for allowable costs under the funding award. However, Public Law 93–638 is applicable to certain Department of the Interior and Indian Health Service programs. It is not applicable to ACF grant programs, including the Tribal CSE program.

Like many other ACF grant programs, the Tribal CSE program is subject to the grant administrative regulations in 45 CFR part 92. This requirement is set forth in proposed paragraph (g). Grantee cash management practices are governed by the regulations at 45 CFR 92.20 and 92.21, which require that grantees minimize the time between when the grantee draws funds from the Treasury and the time when the grantee actually disburses funds for approved program purposes.

In practice, this would works as follows. If a Tribal CSE agency will need funds to cover, for example, a payroll or a payment to a contractor, it will contact the Department's Payment Management

System (PMS) several days before it needs to make the payment. PMS will electronically transfer the funds the Tribal CSE agency needs to make this payment directly to the Tribal CSE agency's bank. The Tribal CSE agency then makes the payment; for example, it issues payroll checks or sends a check to its contractor.

Another concern was delays in issuing grants at the beginning of a fiscal year. This often occurs when Congress fails to enact an appropriation and instead enacts a continuing resolution. This should not be a problem for Tribal CSE grants. Congress appropriates funds for CSE activities, including Tribal CSE activities carried out under section 455(f) of the Act, in the ''Children and Families Services'' appropriation account. This account is unique in that the appropriation usually provides funds not just for the current fiscal year, but also an ''advance appropriation'' for the first quarter of the next fiscal year. For example, the CSE appropriation for FY 1999 also made funds available for the first quarter of FY 2000. This means that OCSE will be able to make child support funding payments at the beginning of a fiscal year, even in the absence of a regular appropriation (for example, under a ''continuing resolution''). Also, this proposed rule allows a Tribal CSE agency to elect its own funding period. Many Tribes have a July 1 to June 30 fiscal year and we expect many Tribes will elect to receive funds on that basis.

Providing the appropriate level of automation is essential to the success of Tribal Child Support Enforcement programs. However, OCSE's experience with State system development efforts has indicated clearly the difficulty in developing such systems. In particular, the costs of developing automated CSE systems and the risk of failure in systems development efforts warrant careful planning by grantees and close oversight by OCSE.

States are required by statute to have comprehensive Statewide automated systems encompassing virtually every facet of their child support programs. Such a requirement does not exist in statute for Tribes, nor are we proposing to specify by regulation a specific level of automation that each Tribal CSE program must have. Rather, we are proposing to allow Tribal CSE grantees to acquire a level of automation which makes sense for their individual programs and which can be cost-justified. OCSE anticipates that the appropriate level of automation will vary considerably from program to program. For some larger Tribal CSE programs, a high level of automation, approaching that of Statewide automated CSE systems, may be appropriate and cost-justifiable.

For other Tribes, the automation of only some processes in their program may be the most appropriate and justifiable level of automation.

Because OCSE is not proposing to regulate what aspects of a Tribe's CSE program must be automated, these proposed regulations do not contain a certification requirement. Instead, OCSE is proposing that each Tribe determine what functions need to be automated in order to enable the Tribe to have an effective CSE program and to determine what enhancements to this basic functionality would be cost-beneficial. (However, OCSE reserves the right to review a Tribal CSE agency's automation efforts to determine whether they followed the approved budget and whether those efforts were effective.) OCSE is especially interested in receiving suggestions regarding whether it should mandate certain automation requirements for Tribal child support enforcement programs.

For Tribes seeking to make relatively small investments in automation, OCSE believes that it can exercise an appropriate level of oversight through the budget review and grant-making processes described in subpart D of this NPRM. Tribes that seek to acquire ADP hardware, software or ADP-related services will be required to identify those items in their budget requests submitted with their applications or amendments.

However, OCSE is seeking comments on the appropriate way to provide oversight and to foster the success of larger investments in automation, especially those that involve the development of new ADP systems. OCSE is seeking to strike a balance between an appropriate level of oversight, the size of Tribal systems efforts, and administrative burden. OCSE is hampered in this by its lack of experience in Tribal systems projects and is therefore seeking comments on the best way to structure regulations in this area.

One possibility is to model those regulations on those used for States or to incorporate, with appropriate modifications, the State regulations in this regulation. State child support systems efforts are governed by HHS regulations at 45 CFR part 95, subpart F. These regulations specify in detail a rigorous methodology for planning and managing system development projects and for securing Federal funding. OCSE is considering applying part 95 to Tribal child support systems efforts. OCSE is, however, asking for comments on the appropriateness of applying 45 CFR part 95 to the Tribal child support program and on the modifications that might be necessary or desirable to adapt part 95 to the Tribal CSE program.

How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds? (section 309.135)

In paragraph (a), we propose that a Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which any unobligated funds were awarded, by the amount that remained unobligated at the end of the budget period.

''Obligated'' means that the Tribe or Tribal organization would have to legally bind itself to pay grant funds to someone else. For example, allowing employees to work obligates the Tribe or Tribal organization to pay them, so the cost of salaries and wages accrued during a budget period represents an obligation. Likewise, a Tribe or Tribal organization's signing a contract with a vendor for supplies or services obligates the Tribe or Tribal organization to pay the vendor upon receipt of those supplies or services, so the contract is an obligation.

For the next budget period, the Department will award to the Tribe or Tribal organization the requested or negotiated amount of CSE funds that the Tribe or Tribal organization is expected to need to operate its program for that budget period—subject to the same obligation requirement. This assures that the Tribe or Tribal organization will have sufficient funds to operate its Tribal CSE program.

In paragraph (b), we propose that a Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for

liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grant officer listed on the grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which any unliquidated funds were awarded by the amount that remains unliquidated at the end of the liquidation period.

The proposed rule would require that, in most cases, obligations must be liquidated by the last day of the 12-month period following the budget period in which the obligation occurs. *Liquidate an obligation* means making a payment or payments that fulfill the obligation. For example, issuing payroll checks liquidates the accrued obligation to employees to pay them for hours worked. Paying a vendor for goods or services delivered liquidates that obligation.

As an example, a Tribe or Tribal organization might be on a July 1 to June 30 budget period and it might sign a contract with a vendor for supplies on August 1, 2001. It would have until June 30, 2003 to liquidate that obligation, *i.e.*, actually pay the vendor. (In this example, the obligation occurs during the July 1, 2001 to June 30, 2002 budget period. The Tribe or Tribal organization has one year from the end of that budget period, *i.e.*, until June 30, 2003, to liquidate the obligation.) Of course, the terms of the contract may require that the Tribe or Tribal organization pay the vendor earlier than that. What we are talking about here is the *maximum* amount of time that the Tribe or Tribal organization has to liquidate an obligation.

We note that the general rule (45 CFR 92.23) is that grantees must liquidate obligations within 90 days after the end of a funding period. However, our experience with other ACF Tribal programs indicates that 90 days often is not sufficient time for grantees to liquidate obligations, especially obligations arising from contracts. Therefore, as 45 CFR 92.23(b) permits, we propose to adopt a longer maximum time period for liquidation—one year after the end of a funding period—consistent with the rules for many other ACF grant programs.

We believe that having a year to obligate funds and another year to liquidate those obligations will cover virtually all circumstances a Tribe or Tribal organization is likely to face in operating its program. We also believe that having such deadlines provides a necessary degree of fiscal discipline and facilitates the Tribe's and Tribal organizations and OCSE's ability to monitor the program. However, to cover very unusual circumstances, the proposed regulation provides that a Tribe or Tribal organization may request a specific exception to this rule if it is unable to liquidate an obligation by the deadline. This request would have to be made in writing before the deadline and would be subject to approval by the Department.

Any CSE grant funds awarded to a Tribe or Tribal organization that have not been liquidated within one year after the end of the funding period, or within a longer time period that the Tribe or Tribal organization has requested and the Department has approved, must be returned to the Federal government. We propose, as discussed under § 309.140(c), that Tribes and Tribal organizations must submit a liquidation report after the end of the maximum period for liquidation of obligations, and this liquidation report should indicate the exact amount of any obligations that remained unliquidated at the end of this period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which the unliquidated funds were awarded, by the amount that remained unliquidated at the end of the liquidation period. To accomplish this, the Department will make a ''negative'' grant award to the Tribe or Tribal organization in the amount of the unliquidated funds. In future funding periods, the Tribe or Tribal organization will continue to receive the amount of Federal funds it is expected to need to operate its Tribal CSE program, consistent with its approved Tribal CSE program application.

If a Tribe or Tribal organization enters a multi-year contract or other multi-year arrangement, it should make the agreement renewable and fundable annually, dependent on the availability of Federal funds. The Tribe or Tribal organization should stipulate in any multi-year contract that the contract is renewable on an annual basis, and the Tribe or Tribal organization should make separate obligations each year. By structuring agreements so that funds are obligated one year at a time and only are chargeable to the Tribal CSE grant when obligated in this way, the Tribe or Tribal organization should be able to meet the proposed obligation and liquidation requirements.

As we have explained, the Tribe or Tribal organization will continue to receive 90 or 80 percent of the reasonable, necessary, and allocable costs to operate its Tribal CSE program, consistent with its approved Tribal CSE application, and the funding amount could be renegotiated as appropriate, as part of the budget review and negotiation process. However, if a Tribe or Tribal organization has large amounts of unobligated and/or unliquidated funds, and/or a Tribe or Tribal organization repeatedly fails to liquidate its obligations within the allowed time period, this might indicate that the Tribe or Tribal organization's financial systems are inadequate and need appropriate attention. If a Tribe or Tribal organization repeatedly fails to liquidate obligations in a timely way, we would reexamine its entire program budget development process and take appropriate steps concerning any deficiencies in its financial systems.

As part of this reexamination, we would carefully analyze the Tribe's funding requests, financial and program reports, and audits and provide appropriate technical assistance to help the Tribe identify and correct any problems. We also would conduct on-site assessments as appropriate to examine the Tribe's administrative and financial systems. If necessary, we would reduce the Federal funds granted to the Tribe for its CSE program consistent with the Tribe's actual pattern of obligations in the past.

What are the financial reporting requirements? (section 309.140)

In paragraph (a), we propose that a Tribe and Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of the budget period.

The SF 269 is a government-wide form used by grantees to report on the use of grant funds. We expect that all Tribes and Tribal organizations will be familiar with the form and see no need to develop an OCSE-specific financial reporting form for Tribal CSE grant funds.

In paragraph (b), we propose a Tribe or Tribal organization operating a Tribal

CSE program must submit the ''Child Support Enforcement Program: Quarterly Report of Collections'' (Form OCSE–34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of each budget period.

The due dates will be the same as the due dates for the quarterly financial status report. The OCSE–34A covers the collection and disposition of child support collected from non-custodial parents. We note that this form is designed for States' use and contains a number of entries that may be inapplicable to a Tribal CSE program. OCSE will be issuing special instructions for Tribes and Tribal organizations using the OCSE–34A. After we gain more experience with the Tribal CSE program, we may develop a child support collections form that is tailored to Tribal CSE programs.

In paragraph (c), we propose that a Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidations of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

In paragraph (d), we propose that the Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part? (section 309.145)

In this section, we propose allowable charges to ''full service'' Tribal CSE programs carried out under § 309.65(a) of this proposed rule. We propose that Federal funds under section 455(f) of the Act are available for the direct costs of operating a Tribal CSE program under an approved Tribal CSE application, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs would include those listed below.

In paragraph (a), we propose that costs for support enforcement services provided to eligible individuals, including parent locator services, paternity establishment, and support order establishment, modification, and enforcement services, are allowable.

In paragraph (b), we propose that allowable costs associated with the administration of the Tribal CSE program, include but are not limited to the activities listed below.

(1) Establishment and administration of the Tribal CSE program plan.

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness and scope of available support enforcement services.

(3) Establishment of all necessary agreements with other Tribal, State and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and,

(vi) Development of cost allocation systems.

In proposed paragraph (c), allowable costs include establishment of paternity, including the activities listed below.

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan.

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery.

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate.

In proposed paragraph (d), allowable costs include establishment, modification and enforcement of support obligations including the activities listed below.

(1) Investigation, development of evidence and, when appropriate, court or administrative actions.

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate).

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support.

(4) Investigation and prosecution of fraud related to child and spousal support.

In proposed paragraph (e), allowable costs include the collection and disbursement of support payments, including the activities listed below.

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them.

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate.

(3) Making collections for another Tribal CSE program or for a State CSE program.

In proposed paragraph (f), allowable costs include the establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS or to the Federal PLS for location purposes.

In proposed paragraph (g), allowable costs include activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund offset.

In proposed paragraph (h), allowable costs include establishing and maintaining case records.

In proposed paragraph (i), allowable costs include planning, design, development, installation, enhancement and operation of CSE computer systems.

In proposed paragraph (j), allowable costs include staffing and equipment that are directly related to operating a Tribal CSE program.

In proposed paragraph (k), allowable costs include the portion of salaries and expenses of a Tribe's chief executive and staff that are directly attributable to managing and operating a Tribal CSE program.

In proposed paragraph (l), allowable costs include the portion of salaries and

expenses of Tribal judges and staff that is directly related to Tribal CSE program activities.

In proposed paragraph (m), allowable costs include service of process.

In proposed paragraph (n), allowable costs include training on a short-term basis that is directly related to operating a Tribal CSE program.

In proposed paragraph (o), allowable costs include costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations and costs associated with providing such technical assistance to public entities.

In proposed paragraph (p), allowable costs also include any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A–87.

The list of activities on which Federal funds under section 455(f) of the Act may be expended, is similar to the list of allowable expenses for State expenditures in our regulations at 45 CFR 304.20. This list is not meant to include all possible expenditures that could be charged to a Tribe or Tribal organization's CSE grant; making a list of every conceivable expenditure would be impossible. Rather, the list provides detailed guidelines as to the kinds of expenditures that a Tribe or Tribal organization can charge to its CSE grant. We are specifically asking for comments regarding any other category of costs on which we should provide such guidance.

One difference from States' allowable costs is in proposed § 309.145(k). Generally, States may not charge to Federal grant programs salaries attributable to high-ranking State officials, such as the Governor or legislators. However, OMB Circular A–87, Attachment B, Section 23.b, states: ''For Federally recognized Indian Tribal governments and Councils of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.'' Following this guidance, the proposed rule provides that the portion of the salaries and expenses of a Tribe's chief executive and staff which are directly attributable to managing and operating a Tribal CSE program are allowable charges to the Tribal CSE grant.

One other difference from States' allowable costs is in proposed § 309.145(l). In paragraph (l), we propose that the portions of the salaries and expenses of Tribal judges and staff that are directly related to Tribal CSE programs would be allowable charges to the Tribal CSE grant. To the extent that Tribal judges and staff work on matters other than those directly related to child support enforcement, their time and expenses would have to be cost-allocated among their various activities. Only those costs allocable to child support may be charged to the Tribal CSE grant.

Adequate infrastructure is necessary in order for Tribal CSE programs to succeed. However, most Tribal courts are severely underfunded and understaffed. Tribal CSE responsibilities will make significant demands on these very limited Tribal courts. Therefore, to assure adequate staffing to carry out Tribal CSE programs, we propose that salaries and expenses of Tribal judges and staff that are allocable to the Tribal CSE program be allowable costs.

In the State IV–D program, Federal financial participation is not available for costs of compensation of judges or for other judicial expenses; judiciary costs are considered under the category of general State or local governmental expenses which are incurred as a result of general State requirements. States have well-established court systems and would be paying the salaries of judges independent of their child support programs. During the consultation process, we received many requests that we allow both direct and indirect costs to be charged to Tribal CSE grants. The proposed rule contains a provision that makes it clear that a Tribe or Tribal organization may charge indirect costs computed at the applicable negotiated indirect cost rate to its Tribal CSE grant. This is consistent with general Federal grant regulations and policies. There are three areas related to Tribal CSE grants that Tribes and Tribal organizations should explore with the cognizant agency responsible for their indirect cost agreement. First, the indirect cost agreement may need to be changed to reflect the new funding source—the Tribal CSE grant. Second, Tribal CSE grants can encompass a variety of activities. Some of those activities may already be included in the Tribe's indirect cost pool. In order for those costs to be charged directly to the Tribal CSE grant, the Tribe will need to remove them from the indirect cost pool. Finally, some transactions will fall outside the negotiated indirect cost agreement, for example, child support collections and the disbursement of those collections. A Tribal CSE grantee cannot charge indirect costs on activities outside its negotiated indirect cost agreement. Again, we encourage Tribes and Tribal organizations to discuss their Tribal CSE grant and its impact on their negotiated indirect cost agreements with the appropriate agency.

What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part? (section 309.150)

In this section, we propose allowable charges to Tribal CSE ''start-up'' programs carried out under § 309.65(b) of this proposed rule. We also propose that Federal funding for a Tribe or Tribal organization's start-up program under § 309.65(b) cannot exceed a total of $500,000, except that, if the non-Federal share is waived, Federal funding for a start-up program cannot exceed a total of $555,555. Federal funds are available for both direct start-up costs, and for indirect costs, where applicable, at the negotiated indirect cost rate.

Participants in our consultations repeatedly said that many Tribes will need program development funding in order to put CSE programs in place. Accordingly, the proposed rule provides that initial program activities—planning; developing Tribal CSE laws, codes, guidelines, systems and procedures; recruiting, hiring and training staff; and other approved, reasonable and necessary start-up costs—are allowable.

Capacity-building start-up funding will enable Tribes and Tribal organizations of varying sizes and circumstances to build the necessary infrastructure specifically for CSE programs. Based on the experiences of currently-operating Tribal CSE programs, we think that a Tribe or Tribal organization that receives start-up funding normally would be expected to operate a full Tribal CSE program within two years, and that a Federal share of $500,000 is an appropriate maximum amount to pay reasonable and necessary start-up costs and complete start-up activities. A Tribe or Tribal organization could apply for full service CSE program funding under § 309.65(a) as soon as it meets the requirements of that section.

A Tribe of Tribal organization must specify the level of necessary start-up funding in its application for Tribal CSE start-up funding.

We propose that Tribes and Tribal organizations receiving start-up funding must include a program progress report in their refunding applications, and HHS will monitor these grantees. If HHS determines that a Tribe or Tribal organization receiving start-up funding is making reasonable, satisfactory progress toward operating a full

program, then start-up funding should continue for a second year if the Tribe or Tribal organization requests it. As noted earlier in the preamble, in extraordinary circumstances, HHS will consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization.

As indicated earlier, we request comments about the appropriate length and maximum amount of start-up funding.

What uses of Tribal CSE program funds are not allowable? (section 309.155)

In proposed paragraph (a), Tribal CSE funds may not be used for services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies.

In proposed paragraph (b), Tribal CSE funds may not be used for construction and major renovations.

In proposed paragraph (c), Tribal CSE funds may not be used for any expenditures that have been reimbursed by fees collected.

In proposed paragraph (d), Tribal CSE funds may not be used for expenditures for jailing of parents in Tribal CSE program cases.

In proposed paragraph (e), Tribal CSE funds may not be used for the cost of legal counsel for indigent defendants in Tribal CSE program actions.

In proposed paragraph (f), Tribal CSE funds may not be used for the cost of a guardian ad litem.

In proposed paragraph (g), Tribal CSE funds may not be used for all other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A–87.

Our existing regulations for States (45 CFR 304.23) list a number of items whose costs cannot be charged to Federal child support grants to States. We are including a similar list of unallowable costs for Tribes and Tribal organizations in this proposed rule.

The proposed rule provides that services or fees paid by other Federal agencies or by programs funded by other Federal agencies are unallowable, as are any expenditures that have been reimbursed through collections. These provisions follow a general principle that grantees cannot charge costs against a Federal grant unless they have actually incurred the cost themselves. The proposed rule also provides that construction and major renovations are unallowable. In general, grant funds can be used for construction and renovation only if Congress specifically authorizes those uses. The child support statute does not provide for this use.

We propose that expenditures for jailing of parents in Tribal CSE cases are unallowable. The child support regulations for States prohibit States' charging costs associated with jailing parents who fail to pay their child support obligations. The reasoning for States is that incarceration is an inherent government function and is not unique to child support. Jailing individuals for violations of law or procedure—State, Tribal, or local—must be characterized as part of the overall general responsibility of State, Tribal, or local government and are therefore unallowable. If jail is the penalty for violations of Tribal law, its associated expenses should be considered general Tribal expenses for which Federal CSE funding is not permitted. Establishment and operation of penalties for violations of Tribal law is solely the responsibility of Tribal governments and not confined to the CSE program. These are costs incurred as part of administering a Tribal government and are not appropriately borne by the Federal child support grant. Therefore, we decided to propose applying the same provision to Tribes.

The proposed rule also provides that the cost of a guardian ad litem appointed by the court to protect the interests of a child in a child support case, and the cost of legal counsel for indigent defendants, are not allowable. The costs of counsel for indigent defendants and for guardians ad litem in IV–D actions are unallowable in State IV–D programs as well. The reason for this is that the guardian ad litem in a child support case is a representative of the child, as an attorney for an indigent defendant is a representative of that defendant. While it is in the best interests of the child or defendant to have such representation, that representation is essentially a private matter (and may also be a general Tribal expense that is part of the overall responsibility of Tribal government), as opposed to a child support program function. We considered allowing Tribes to charge these costs to the Tribal CSE program. Our concern was to help ensure that children and parents receive appropriate representation in child support hearings and other matters. However, we concluded that, as is the case with States, a guardian ad litem or attorney is not a CSE programmatic concern, and could not appropriately be charged to the Federal child support grant.

This proposed section specifies that all other costs that are not reasonable, necessary, and allocable under the cost principles in OMB Circular A–87 are unallowable under Tribal CSE grants.

Subpart E—Accountability and Monitoring

How will OCSE determine if Tribal CSE program funds are appropriately expended? (section 309.160)

We propose that OCSE will rely on audits required by OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215 (c) of the Circular. The Department may also supplement the required audit through reviews or audits conducted by its own staff.

Under OMB Circular A–133, audits include the review of an organization's internal control procedures. Thus, such audits are expected to look at expenditures made with Federal Tribal CSE grant funds and the child support collections of Tribes and Tribal organizations operating their own Tribal Child Support programs. OCSE will be developing an audit compliance supplement for A–133 audits specific to the Tribal CSE program in the future. In addition, OCSE may supplement the required audit through reviews or audits conducted by OCSE staff.

What recourse does a tribe or tribal organization have to dispute a determination to disallow tribal CSE program expenditures? (section 309.165)

We propose that if a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable under this part. Any notice of disallowance issued by OCSE will inform the Tribe or Tribal organization of its appeal rights, the procedures for exercising those rights, and the timeframes for doing so.

The procedures of the Departmental Appeals Board are summarized in 45 CFR 16.4 as follows: The Departmental Appeals Board's basic process is to review the written record (which both parties are given ample opportunity to develop), consisting of relevant documents and statements submitted by both parties. In addition, the Board may hold an informal conference. The informal conference primarily involves questioning of the participants by a presiding Board member. Conferences may be conducted by conference call. The written record review also may be supplemented by a hearing involving an opportunity for examining evidence and witnesses, cross-examination, and oral argument. A hearing is more expensive

and time-consuming than a determination on the written record alone or with an informal conference. Generally, therefore, the Board will schedule a hearing only if the Board determines that there are complex issues or material facts in dispute, or that a hearing would otherwise significantly enhance the Board's review. Where the amount in dispute is $25,000 or less, there are special expedited procedures. In all cases, the Board has the flexibility to modify procedures to ensure fairness, to avoid delay, and to accommodate the peculiar needs of a given case. The Board makes maximum feasible use of preliminary informal steps to refine issues and to encourage resolution by the parties. The Board also has the capability to provide mediation services.

Subpart F—Statistical and Narrative Reporting Requirements

What statistical and narrative reporting requirements apply to tribal CSE programs? (section 309.170)

We propose that Tribes and Tribal organizations must submit information and statistics for Tribal CSE program activity and caseload and costs for each budget period.

In paragraph (a), we propose that Tribes and Tribal organizations submit the total number of cases, and, of the total number of cases, indicate the number that are TANF cases and the number that are non-TANF cases.

In paragraph (b), we propose that Tribes and Tribal organizations submit the total number of paternities needed and number of paternities established.

In paragraph (c), we propose that Tribes and Tribal organizations submit the total number of support orders needed and the total number of orders established.

In paragraph (d), we propose that Tribes and Tribal organizations submit the total amount of current support due and collected.

In paragraph (e), we propose that Tribes and Tribal organizations submit the total amount of past-due support owed and the total amount collected.

In paragraph (f), we propose that Tribes and Tribal organizations submit a narrative report on activities, accomplishments and progress of the program.

In paragraph (g), we propose that Tribes and Tribal organizations submit total costs claimed.

In paragraph (h), we propose that Tribes and Tribal organizations submit the total amount of fees and costs recovered.

In paragraph (i), we propose that Tribes and Tribal organizations submit the total amount of automated data processing (ADP) costs.

In paragraph (j), we propose that Tribes and Tribal organizations submit the total amount of laboratory paternity establishment costs.

In an effort to minimize the burden on Tribes and Tribal organizations, there are minimum reporting requirements. We understand that the Tribal measure of success would not necessarily be the same as the State measure of success. However, we do believe that this information will be helpful to Tribes and Tribal organizations when they are contemplating funding requests and anticipating (and tracking) growth of the program.

The Office of Child Support Enforcement is required by law to submit an annual report to Congress, which contains certain specific statistics. The statistics reported for proposed paragraphs (g)–(j) are statistics that will be included in that report.

When are Statistical and Narrative Reports Due? (Section 309.175)

We propose that a Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of its budget period. We think that the proposed 90 days will give Tribes and Tribal organizations sufficient time to prepare and submit the report.

List of Subjects in 45 CFR Part 309

Child support, grant program—social programs, Indians, Native Americans, Tribal Child Support Enforcement programs.

Dated: July 18, 2000.

Olivia A. Golden,

Assistant, Secretary for Children and Families.

Approved: July 18, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed in the preamble, we propose to amend title 45 chapter III of the Code of Federal Regulations by adding new part 309 to read as follows:

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAM

Subpart A—Tribal CSE Program: General Provisions

Sec.
309.01 What does this part cover?
309.05 What definitions apply to this part?
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309.20 Who submits a Tribal CSE program application?
309.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?
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309.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?
309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?
309.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?
309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?
309.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?
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organization include in a Tribal CSE plan?

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309.125 On what basis is Federal funding in Tribal CSE programs determined?
309.130 How will Tribal CSE programs be funded?
309.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?
309.140 What are the financial reporting requirements?
309.145 What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part?
309.150 What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part?
309.155 What uses of Tribal CSE program funds are not allowable?

Subpart E—Accountability and Monitoring

309.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?
309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

Subpart F—Statistical and Narrative Reporting Requirements

309.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?
309.175 When are statistical and narrative reports due?

Authority: 42 U.S.C. 655(f), 1302.

Subpart A—Tribal CSE Program: General Provisions

§ 309.01 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act. Section 455(f) authorizes direct grants to Indian Tribes and Tribal organizations to operate child support enforcement programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f). They establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

§ 309.05 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families, Department of Health and Human Services.

Act means the Social Security Act, unless otherwise specified.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Central office means the central office of the Office of Child Support Enforcement.

CSE services are the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV–D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency.

Child support order and child support obligation mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

The Department means the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe and Tribe mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

Location means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

Regional office refers to one of the regional offices of the Administration for Children and Families.

Secretary means the Secretary of the Department of Health and Human Services.

Title IV–D refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

Tribal CSE agency means the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.

Tribal organization means the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.

§ 309.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

The following are eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part:

(a) An Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe(s) that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

Subpart B—Tribal CSE Program Application Procedures

§ 309.15 What is a Tribal CSE program application?

(a) *Initial application.* The initial application must include:

(1) Standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs; and

(2) A Tribal CSE plan—a comprehensive statement meeting the requirements of subpart C of this part that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Annual refunding applications.* (1) Annual refunding applications must include standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs. As appropriate, annual refunding applications also may include amendment(s) to the Tribal CSE plan.

(2) The refunding application of a Tribe or Tribal organization receiving start-up funding based on approval of a Tribal CSE plan submitted pursuant to § 309.65(b) of this part also must include a progress report that describes accomplishments to date in carrying out the Tribe or Tribal organization's program development plan, and any alterations to the plan and schedule (in addition to the requirements in paragraph (b)(1) of this section).

(c) *Additional application requirement for Tribal organizations.* The application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf.

§ 309.20 Who submits a Tribal CSE program application?

The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

§ 309.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

(a) The initial application consisting of the Tribal CSE program plan that meets the requirements under subpart C of this part, and the application and budget information forms (SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

(b) Subsequent refunding applications containing only SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually at least 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time.

(c) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program:

(1) A Tribal CSE plan amendment must be submitted at the earliest reasonable time for approval under § 309.35. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements under § 309.65.

(2) Any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that such amendments be so considered, they must be submitted no less than 90 days before the proposed effective date of the new plan.

(d) If a Tribe or Tribal organization receives funding based on submittal and approval of a Tribal CSE application which includes a program development plan under § 309.65(b), a progress report that describes accomplishments to date in carrying out the plan and any alterations to the plan and schedule must be submitted with the next annual refunding request.

(e) The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

§ 309.30 Where does the Tribe or Tribal organization submit the application?

Applications must be submitted to the central office of the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate regional office.

§ 309.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

(a) The Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved.

(b) The Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

§ 309.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

(a) An application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, code, regulations, and procedures described in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV–D including: Ensuring access to services; paternity establishment; support order establishment; basing child support orders on the noncustodial parent's ability to pay; collecting support; making timely and accurate payments to families; protecting due process rights; and protecting security of data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines that the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

(b) A written Notice of Disapproval of the Tribal CSE program application or plan amendment will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 309.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

§ 309.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

(a) A Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 309.65 and subpart C of this part.

(c) After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal

organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held.

(d) A conference call or meeting under § 309.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held. This determination upon reconsideration shall be the final decision of the Secretary.

(f) The Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending the reconsideration under this part.

§ 309.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

(a) If an application submitted pursuant to § 309.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

(b) If a plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time, once it has remedied the circumstances that led to disapproval of the application or amendment.

Subpart C—-Tribal CSE Plan Requirements

§ 309.55 What does this subpart cover?

This subpart defines the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 309.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

(a) Under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State, and/or another agency pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State, or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts, or Tribal resolutions between the Tribal CSE agency and a Tribe, State, or other agency.

§ 309.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

At the time of its application, a Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program either under paragraph (a) or paragraph (b) of this section.

(a) A Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the requirements listed in paragraphs (a)(1) through (14) of this section:

(1) Describes the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 309.75;

(5) Safeguarding procedures as specified under § 309.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 309.90;

(8) Procedures for the location of noncustodial parents as specified under § 309.95;

(9) Procedures for the establishment of paternity as specified under § 309.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;

(11) Procedures for income withholding as specified under § 309.110;

(12) Procedures for the distribution of child support collections as specified under § 309.115;

(13) Procedures for intergovernmental case processing as specified under § 309.120; and

(14) Reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected, and amount of past due support to be collected.

(b) If a Tribe or Tribal organization is unable to satisfy any or all of the requirements specified in paragraph (a) of this section, it may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan detailing:

(1) With respect to each requirement in paragraph (a) of this section that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement; and

(2) With respect to each requirement in paragraph (a) of this section that the Tribe or Tribal organization does not currently meet, the specific steps the Tribe or Tribal organization will take to come into compliance and the timeframe associated with each step under this program development plan. The program development plan must demonstrate to the satisfaction of the Secretary or designee that the Tribe or Tribal organization will have in place a Tribal CSE program that will meet the requirements outlined in paragraph (a) of this section, within a reasonable, specific period of time, not to exceed two years.

(c) The Secretary or designee will cease funding a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress

pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified.

(d) No later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a) of this section, or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with paragraphs (d)(1) through (5) of this section, whichever is later, a Tribal CSE plan must include the following:

(1) Procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(2) Procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(3) Procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee;

(4) Procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee; and

(5) Procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

(e) In the CSE plan included in its initial application and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must certify that, as of the date the plan or plan amendment is submitted to the Department, there are at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing the Tribal organization to operate a CSE program on their behalf, that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

§ 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes.

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements:

(a) A description of the structure of the agency and the distribution of responsibilities within the agency.

(b) Procedures under which applications for Tribal CSE services are made available to the public upon request.

(c) Procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action.

(d) Procedures to control the use of and to account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person who has access to or control over funds collected under the Tribal CSE program is covered by a bond against loss resulting from employee dishonesty;

(2) The requirement in paragraph (d) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles, or has access to support collections;

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program; and

(4) A Tribe may comply with the requirements of paragraph (d) of this section by means of self-bonding established under Tribal law and approved by the Secretary or designee.

(e) Procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

(f) Certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133.

§ 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes safeguarding provisions consistent with the following and approved by the Secretary or designee:

(a) Procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or with other programs or purposes prescribed by the Secretary or designee.

(b) Procedures consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and which conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

(c) Procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

§ 309.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes procedures for maintaining records necessary for proper and efficient operation of the program, including:

(1) Applications for support services;
(2) Records on location of noncustodial parents;
(3) Records on actions taken to establish paternity and obtain and enforce support;
(4) Records on amounts and sources of support collections and the distribution of such collections;
(5) Records on other costs; and
(6) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary or designee.
(b) The retention and access requirements for these records are prescribed at 45 CFR 92.42.

§ 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes Tribal law, code, regulations, and/or other evidence that provides specific procedures that result in:
(a) Establishment of paternity for any child up to and including at least 18 years of age;
(b) Establishment and modification of child support obligations;
(c) Enforcing child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110; and
(d) Locating noncustodial parents.
In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary or designee.

§ 309.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents:
(a) In all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and
(b) All sources of information and records reasonably available to the Tribe or Tribal organization must be used to locate noncustodial parents.

§ 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures that result in the establishment of paternity included in this section. For cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:
(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom; and
(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.
(b) The Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity.
(c) When genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

§ 309.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan:
(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;
(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and
(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.
(b) The guidelines established under paragraph (a) of this section must at a minimum:
(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and
(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.
(c) The Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.
(d) The Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.
(e) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

§ 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws and regulations providing for income withholding under which:
(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.
(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.
(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b)

of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(b) To initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal form that includes the following:

(1) The amount to be withheld;

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid;

(3) A requirement that the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income;

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted;

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe;

(6) A requirement that, if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income; and

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(c) The income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

(d) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(e) The provisions of this section do not apply to that portion of a child support order that may be satisfied in kind.

(f) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

§ 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following requirements:

(a) In cases where families receiving services from the Tribal CSE program are receiving Temporary Assistance for Needy Families (TANF) assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act;

(b) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act;

(c) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe, and any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family;

(d) In cases where families receiving services from the Tribal CSE program formerly received Tribal TANF assistance and assigned their right to child support to the Tribe, collected child support above current support may be retained by the Tribe as reimbursement for past Tribal TANF assistance payments made to the family for which the Tribe has not been reimbursed, and any collected child support in excess of the amount of unreimbursed Tribal TANF assistance received by the family must be paid to the family; and

(e) In cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

§ 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes:

(a) Procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee; and

(b) Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

Subpart D—Tribal CSE Program Funding

§ 309.125 On what basis is Federal funding in Tribal CSE programs determined?

Federal funding of Tribal CSE programs is based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and which gives assurance that it will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part, and other official issuances of the Department.

§ 309.130 How will Tribal CSE programs be funded?

(a) *General mechanism.* Tribal CSE programs will be funded on an annual basis. At or just before the beginning of a Tribal grantee's program year, OCSE will issue a grant award to the Tribe or Tribal organization to operate its Tribal CSE program for the following 12-month budget period.

(b) *Special provision for initial grant.* A Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than an year (but not to exceed 17 months) to enable its program funding cycle to coincide with its desired annual funding cycle.

(c) *Determination of Tribal funding amounts.* The Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs to

pay reasonable, necessary, and allocable costs to operate its Tribal CSE program, based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information—Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee.

(d) *Federal and non-Federal shares.* (1)(i) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 309.65(a) of this part, the amount of the Federal grant will not exceed 90 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 309.65(a) of this part for three years, the amount of the Federal grant will not exceed 80 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section.

(ii) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 309.65(a) of this part, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 10 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 309.65(a) of this part for three years, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 20 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. The non-Federal share may be provided in cash and/or in kind, fairly valued, by the Tribe or Tribal organization and/or by a third party, in accordance with the requirements of 45 CFR 92.24 and this part.

(iii) Donations of funds, and in-kind contributions of property and services valued at fair market value, from a third party to a Tribe or Tribal organization, may satisfy the non-Federal share requirement. The non-Federal share requirement may not be satisfied by:

(A) Donations for which the donor receives or expects to receive a financial or economic benefit;

(B) Donations intended as consideration for any benefit received from the Tribe or Tribal organization;

(C) Donations whose costs ultimately will be borne by another Federal grant; or

(D) Any other donation which the Secretary or designee determines to benefit the donor in a manner inconsistent with 45 CFR part 92.

(2)(i) A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent non-Federal matching share may request a waiver of part or all of the non-Federal share.

(ii) Requests for waiver of part or all of the non-Federal matching share must be included with initial applications for funding, refunding applications, and budget amendment requests, and must contain the following:

(A) A statement that the Tribe or Tribal organization lacks the available resources to meet the 10 or 20 percent non-Federal matching share;

(B) A statement of the amount of the non-Federal share that the Tribe or Tribal organization requests the Secretary or designee to waive;

(C) A statement of the reasons that the Tribe or Tribal organization is unable to meet the non-Federal share requirement; and

(D) Documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful.

(iii) The Secretary or designee may require submission of additional information and documentation as necessary. The Secretary or designee will grant a waiver of all or part of the non-Federal matching share, as appropriate, if he or she determines that a waiver request demonstrates that the Tribe or Tribal organization lacks sufficient resources to provide the non-Federal share, has made reasonable but unsuccessful efforts to obtain non-Federal share contributions, and has provided all required information. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(e) *Increase in approved budget.* A Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and Standard Form 424A (Budget Information-Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment in accordance with § 309.25(c) of this part, with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted in accordance with § 309.25(e). The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving any additional funding.

(f) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System.

(g) *Grant administration requirements.* The Tribal CSE program is subject to the grant administration regulations under 45 CFR part 92.

§ 309.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?

(a) A Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unobligated funds were awarded by the amount that remained unobligated at the end of this budget period.

(b) A Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for

liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grants officer listed on the most recent grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unliquidated funds were awarded, by the amount that remains unliquidated at the end of the liquidation period. Repeated failure by a Tribe or Tribal organization to liquidate obligations in a timely way would result in the Department's reexamination of the program budget development process and could result in action to address financial systems deficiencies.

§ 309.140 What are the financial reporting requirements?

(a) A Tribe or Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(b) A Tribe or Tribal organization operating a Tribal CSE program must submit the ''Child Support Enforcement Program: Quarterly Report of Collections'' (Form OCSE–34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(c) A Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidation of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

(d) The Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

§ 309.145 What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part?

Federal funds are available for direct costs of operating a Tribal CSE program under an approved Tribal CSE application carried out under § 309.65(a) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs include:

(a) Support enforcement services provided to eligible individuals, including: parent locator services; paternity establishment; and support order establishment, modification, and enforcement services;

(b) Administration of the Tribal CSE program, including but not limited to the following:

(1) Establishment and administration of the Tribal CSE program plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems;

(c) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate;

(d) Establishment, modification, and enforcement of support obligations including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate);

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support;

(e) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate; and

(3) Making collections for another Tribal CSE program or for a State CSE program;

(f) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes;

(g) Activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund Offset;

(h) Establishing and maintaining case records;

(i) Planning, design, development, installation, enhancement, and operation of CSE computer systems;

(j) Staffing and equipment that are directly related to operating a Tribal CSE program;

(k) The portion of salaries and expenses of a Tribe's chief executive

and staff that is directly attributable to managing and operating a Tribal CSE program;

(l) The portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal CSE program activities;

(m) Service of process;

(n) Training on a short-term basis that is directly related to operating a Tribal CSE program;

(o) Costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities; and

(p) Any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A–87.

§ 309.150 What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part?

Federal funds are available for direct costs of developing a Tribal CSE program under an approved Tribal CSE application carried out under § 309.65(b) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Federal funding for Tribal CSE program development under § 309.65(b) may not exceed a total of $500,000; except that, when the non-Federal matching share is waived, Federal funding for Tribal CSE program development under § 309.65(b) may not exceed a total of $555,555. Allowable start-up costs and activities include:

(a) Planning for the development and implementation of a Tribal CSE program;

(b) Developing Tribal CSE laws, codes, guidelines, systems, and procedures;

(c) Recruiting, hiring, and training Tribal CSE program staff; and

(d) Any other reasonable, necessary, and allocable costs with a direct correlation to development of a Tribal CSE program, consistent with the cost principles in OMB Circular A–87, and approved by the Secretary or designee.

§ 309.155 What uses of Tribal CSE program funds are not allowable?

Federal Tribal CSE funds may not be used for:

(a) Services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees collected;

(d) Expenditures for jailing of parents in Tribal CSE program cases;

(e) The cost of legal counsel for indigent defendants in Tribal CSE program actions;

(f) The cost of guardians ad litem; and

(g) All other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A–87.

Subpart E—Accountability and Monitoring

§ 309.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

§ 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR Part 16 are applicable under this part.

Subpart F—Statistical and Narrative Reporting Requirements

§ 309.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

Tribes and Tribal organizations must submit the following information and statistics for Tribal CSE program activity and caseload for each budget period:

(a) Total number of cases and, of the total number of cases, the number that are TANF cases and the number that are non-TANF cases;

(b) Total number of paternities needed and number of paternities established;

(c) Total number of support orders needed and the total number of orders established;

(d) Total amount of current support due and collected;

(e) Total amount of past-due support owed and total collected;

(f) A narrative report on activities, accomplishments, and progress of the program;

(g) Total costs claimed;

(h) Total amount of fees and costs recovered;

(i) Total amount of automated data processing (ADP) costs; and

(j) Total amount of laboratory paternity establishment costs.

§ 309.175 When are statistical and narrative reports due?

A Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of each budget period.

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Part IV

Department of Housing and Urban Development

24 CFR Parts 5, 92, et al.
Determining Adjusted Income in HUD Programs Serving Persons With Disabilities; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, 200, 236, 574, 582, 583, 891, and 982

[Docket No. FR–4608–P–01]

RIN 2501–AC72

Determining Adjusted Income in HUD Programs Serving Persons With Disabilities: Requiring Mandatory Deductions for Certain Expenses; and Disallowance for Earned Income

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations in part 5, subpart F, to include additional HUD programs in the list of programs that must make certain deductions in calculating a family's adjusted income. These deductions primarily address expenses related to a person's disability, for example medical expenses or attendant care expenses. The purpose of this amendment is to expand the benefits of these deductions to persons with disabilities served by HUD programs not currently covered by part 5, subpart F. Second, the proposed rule would add a new regulatory section to part 5 to require for some but not all of these same programs the disallowance of increases in income as a result of earnings by persons with disabilities. HUD believes that making these deductions and disallowance available to persons with disabilities through as many HUD programs as possible will assist persons with disabilities in obtaining and retaining employment, which is an important step toward economic self-sufficiency.

DATES: Comments Due Date: October 20, 2000.

ADDRESSES: Interested persons are invited to submit comments on this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications must refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: For the HOME Investment Partnerships Program, contact Mary Kolesar, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–2470.

For the Housing Choice Voucher Program, contact Patricia Arnaudo, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–0744.

For the Housing Opportunities for Persons with AIDS Program, contact David Vos, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–1934.

For the Rent Supplement Program, contact, Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Rental Assistance Payment (RAP) Program, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Section 202 Supportive Housing Program for the Elderly (including Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), contact Aretha Williams, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2866.

For Section 8 Project-Based, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Section 811 Supportive Housing Program for Persons with Disabilities, contact Gail Williamson, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2866.

For the Shelter Plus Care Program, contact Jean Whaley, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708–2140.

For the Supportive Housing Program (McKinney Act Homeless Assistance), contact Clifford Taffet, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708–1234.

For all of the above telephone numbers, persons with hearing or speech-impairments may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the ''800'' number, the telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. This Proposed Rule—Background and Proposed Amendments

HUD's FY 1999 Appropriations Act, which included the Quality Housing and Work Responsibility Act of 1998 (as title V of the FY 1999 HUD Appropriations Act) (the entire FY 1999 Appropriations Act, including title V, is Public Law 105–276, approved October 21, 1998, and frequently referred to as the ''Public Housing Reform Act'') enacted landmark measures in HUD programs, including many of the reforms sought by Secretary Cuomo, such as transforming public housing, creating additional housing assistance vouchers, merging the Section 8 certificate and voucher programs, and enabling more families to obtain FHA mortgages to become homeowners. Since the Public Housing Reform Act became law, HUD has published many rules and notices implementing the important changes in HUD programs required by the Act. While the majority of these changes are applicable to HUD's public housing and Section 8 programs, HUD has been able to extend, administratively at times, the benefits of some of these landmark measures to HUD programs not specifically identified by the statute. The particular focus of this proposed rule is to extend the benefits of (1) deducting certain expenses as provided by the Public Housing Reform Act (currently applicable only to public housing and Section 8 housing (tenant-based and project-based)); and (2) disregarding certain increases in earned income as provided by the Public Housing Reform Act (currently applicable only to public housing) to persons with disabilities served by certain other HUD programs. These deductions and the disregard of earned income constitute an important step in helping persons with disabilities find employment and retain employment.

HUD is aware that the lack of accessible, affordable housing continues to be a barrier to the ability of persons with disabilities to take advantage of economic opportunities in many communities across the country. The availability of accessible, affordable housing and the location of that housing can be the key to persons with disabilities in obtaining employment. Estimates concerning unemployment indicate that the unemployment rate

among persons with significant disabilities is in the range of 70% to 75%, among the highest of disadvantaged groups in the nation. To minimize the barriers to accessible, affordable housing, HUD is continually examining its programs to determine ways, through administrative initiatives or legislative or regulatory changes, that may assist in breaking down these barriers. HUD has identified two changes that it can make through rulemaking that HUD believes will encourage and facilitate employment of persons with disabilities, and may be implemented administratively in several HUD programs.

The first amendment proposed by this proposed rule involves extending the applicability of certain mandatory deductions in calculating family adjusted income to other HUD programs that serve persons with disabilities. Section 508 of the Public Housing Reform Act amended section 3(b) of the U.S. Housing Act of 1937 (1937 Act) to change the calculation of adjusted income by adding a number of mandatory deductions to determine adjusted income. These mandatory deductions include disability-related expenses, including medical expenses and attendant care expenses, as well as child-care expenses, and other expenses that would benefit persons with disabilities. These deductions, currently applicable to public housing and Section 8 housing (tenant-based and project-based), can be found in 24 CFR 5.611(a) (see the March 29, 2000, final rule at 65 FR 16717, first column; see also the definition of ''responsible entity'' in 24 CFR 5.100, which only covers public housing and Section 8 housing). Because several HUD non-public housing or non-Section 8 programs define ''low-income'' or ''very low-income'' persons or families as they are defined or in a manner similar to the 1937 Act, or provide for family income to be determined in accordance with the requirements of the 1937 Act, or both, HUD can apply the mandatory deductions in § 5.611(a) to several HUD programs. In fact, several of the HUD programs included in this proposed rule were able to apply the deductions listed in § 5.611 before the amendments made by the March 29, 2000 final rule. Therefore, it is appropriate and beneficial that these programs continue to be able to take advantage of these deductions. The March 29, 2000 final rule, however, did not address these programs. The March 29, 2000 final rule was limited to public housing and Section 8 tenant-based and project-based assistance. This proposed rule is issued to continue the applicability of these deductions to non-public housing and non-Section 8 housing programs. Although these deductions, because of the type of deductible expenses, primarily benefit persons with disabilities, the deductions are eligible to all persons and families served by the programs listed above, not only persons or families with disabilities. Additionally, unless specifically provided in the program regulations amended by this proposed rule, these deductions do not replace other deductions made available to persons with disabilities or to other persons or families as provided in the program regulations.

The HUD programs to which these deductions, as revised by the March 29, 2000 final rule, would be applicable are as follows: HOME Investment Partnerships Program (HOME Program), Housing Opportunities for Persons with AIDS (HOPWA), Rent Supplement Payments Program, Rental Assistance Payments Program, Section 202 Supportive Housing for the Elderly, Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities,[1] Section 811 Supportive Housing for Persons with Disabilities, the Shelter Plus Care Program, and the Supportive Housing Program (McKinney Act Homeless Assistance). As the list of HUD programs reflects, many of the programs are not directed to providing assistance only to persons with disabilities, but persons with disabilities are included in the populations served by these programs.

With respect to the HOME Program, the regulations for this program currently provide (in 24 CFR 92.203) for the calculation of adjusted income to apply the deductions in 24 CFR 5.611. However, the applicability of these deductions can be clarified and HUD makes the clarification in this proposed rule by defining ''responsible entity'' in part 5 to include HOME Program participating jurisdictions.

With respect to the Rent Supplement Program, the regulations for this program, previously codified in 24 CFR part 215, were removed from title 24 of the Code of Regulations in April 1996 because the Rent Supplement Program is an expiring program. New assistance has not been provided under this program for many years, and HUD is closing out the program. HUD retained a ''savings clause,'' however, to ensure that the existing assistance provided by this program continues to be governed by the regulations in effect before their removal, and any subsequent amendments that HUD may make to these regulations. The savings clause is found in 24 CFR part 200, subpart W (see 24 CFR 200.1302). The amendments that HUD has made to the Rent Supplement regulations, since the 1996 removal, are found in 24 CFR 200.1303.

The Rental Assistance Payments Program is also an inactive program. The regulations for this program are codified in 24 CFR part 236, subpart D. Section 236.1 of these regulations provide notice that a moratorium against issuance of commitments to insure new mortgages under section 236 of the National Housing Act (NHA) was imposed January 5, 1973. Section 236(n) of the NHA prohibits the insurance of mortgages under section 236 after November 30, 1983, except to permit the refinance of a mortgage insured under section 236, or to finance pursuant to section 236(j)(3), the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236. As a result of the statutory provisions, HUD removed the majority of the regulations in 24 CFR part 236, subpart A, that provided the eligibility requirements for section 236 mortgage insurance. Subpart A of part 236 also includes a savings clause that advises that the regulations formerly in subpart A remain applicable to section 236 mortgages. Subpart A includes a regulatory section on annual income exclusions. HUD recognized that it was appropriate to retain a section on annual income exclusions because these exclusions may be revised by statute from time to time. For the Rental Assistance Payments Program, this proposed rule amends that applicable provisions of subpart A by amending § 236.710, which reference subpart A.

For both the Rent Supplement Program and the Rental Assistance Payments Program, this proposed rule also updates the definitions for certain terms, that appear in HUD regulations, including ''disabled person'' and ''handicapped person,'' by replacing them with the term ''person with disabilities'' appears in section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013). For the definition of ''handicapped families,'' certain Federal Housing Administration statutes cross-reference the definition of the term in section 202 of the Housing Act of 1959 which program, for purposes of providing housing for handicapped and/or disabled persons, was replaced by section 811. There is no longer a definition for ''handicapped person'' or

[1] The original name for this program was ''Section 202 Direct Loans for Housing for the Elderly and Handicapped.'' This changes the name to the more appropriate ''Section 202 Loans for Housing for the Elderly and Persons with Disabilities.''

''handicapped families'' in the Section 202 or Section 811 statutes. Section 811, however, does have a definition of ''person with disabilities'' which is generally synonymous with the regulatory terms used for FHA programs.

The second amendment proposed by this proposed rule is to expand the ''earned income disregard'' that is now applicable only to HUD's public housing program to the calculation of income for persons with disabilities in four HUD programs that statutorily permit this expansion. HUD's public housing regulations provide in 24 CFR 960.255 for the exclusion from the calculation of annual income those increases in income that result from employment, participation in an economic self-sufficiency or other job training program, or assistance received from a state program for temporary assistance for needy families (TANF). The four HUD programs for which HUD has the authority to implement the earned income disregard for persons with disabilities are: HOME, the Housing Choice Voucher Program (which is the merged Section 8 certificate and voucher programs, the Section 8 tenant-based programs), HOPWA, and Supportive Housing Program (McKinney Act Homeless Assistance). In extending the earned-income disregard to these four HUD programs, HUD recognizes that the Public Housing Reform Act specifically directed the earned-income disregard to be applied to public housing. Application of the earned-income disregard to Section 8 assistance (tenant-based or project-based) was not explicitly addressed in the statute, as it was for public housing and as were other changes that explicitly addressed both public housing and Section 8 housing programs. HUD has determined, however, that the language of the statute provides the flexibility to extend the earned-income disregard to Section 8 tenant-based rental assistance programs. HUD is therefore extending the earned-income disregard to the four programs identified above that provide for Section 8 tenant-based rental assistance, but at this time, however, HUD is limiting the extension of the earned-income disregard, to persons with disabilities, the group served by HUD with the highest unemployment rate. HUD is analyzing the extension of the earned-income disregard to all families served by HUD in these programs, and welcomes comment on this issue.

The specifics of the mandatory deductions to be made are found in § 5.611 of this proposed rule, and for the earned income disregard in new § 5.617 that is added by this proposed rule. The March 29, 2000 final rule removed the previous version of § 5.617, captioned ''Reexamination and verification'' which addressed income reexamination and verification. With the removal of this regulatory section, HUD is using § 5.617 to address disregard of earned income for persons with disabilities. In addition to these amendments, HUD amends § 5.601 of subpart F to include reference to the HUD programs to which applicability of the mandatory deductions and earned income disregard is being proposed by this rule. HUD amends the definitions in § 5.603 to include a definition of ''responsible entity'' to cover the entities that have responsibility for administering the HUD program to be referenced in § 5.601. HUD also makes conforming amendments to the regulations that govern these programs (*e.g.*, the regulations in parts 200, 236, 574, etc.) to provide a cross-reference to the amended and, if applicable, the new regulatory section in part 5, subpart F. By the time of issuance of the final rule, HUD may determine that additional conforming amendments must be made in the covered program regulations, and HUD will make these additional amendments at the final rule stage.

HUD believes that the regulatory changes proposed by this rule represent an important step forward in helping to remove financial barriers that make it difficult for persons with disabilities who are seeking to obtain employment, and to keep employment once obtained. The hope is that the financial savings to a person with disabilities that this proposed rule would provide presents an incentive to that person to continue working, or if not working, to seek employment. Additionally, HUD believes that not only are the changes beneficial to the persons with disabilities that are served by the HUD programs identified above, they are also beneficial to the owners and entities that administer the HUD assisted housing for these persons and families. These proposed amendments provide, to the extent permitted by statute, greater uniformity in determining annual income for HUD programs that serve persons with disabilities, and hopefully through this uniformity minimize the administrative burden that results from the different requirements under different programs for persons and families in similar or identical circumstances.

II. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, or manufactured housing. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned ''Regulatory Planning and Review'') and determined that this proposed rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this proposed rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is limited to expanding existing mandatory expense deductions and earned income disregard to the calculation of income for persons with disabilities in other HUD programs by which the program participants will benefit, and the owners of the housing assisted by these programs will benefit from the uniformity in the program administration this proposed rule presents and the simplicity. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this proposed rule that

will meet HUD's objectives as described in this proposed rule.

Executive Order 13132, Federalism

This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—Housing and community development, Housing, Rent subsidies.

Accordingly, HUD proposes to amend parts 5, 92, 200, 236, 574, 582, 583, 891 and 982 of title 24 of the Code of Federal Regulations as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. The heading for subpart F is revised to read as follows:

Subpart F—Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

3. Section 5.601 is revised to read as follows:

§ 5.601 Purpose and applicability.

This subpart states HUD requirements on the following subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences;

(3) Owner reexamination of family income and composition.

(d) Determining adjusted income, as provided in § 5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these programs.

(e) Determining earned income disregard for persons with disabilities, as provided in § 5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

4. In § 5.603, paragraph (a)(1) is revised and a new definition of ''responsible entity'' is added to paragraph (b) to read as follows:

§ 5.603 Definitions.

* * * * *

(a) *Terms found elsewhere in part 5.*

(1) *Subpart A.* The terms *1937 Act, elderly person, public housing, public housing agency (PHA), responsible entity* and *Section 8* are defined in § 5.100.

* * * * *

(b) * * *

Responsible entity. For § 5.611, in addition to the definition of ''responsible entity'' in § 5.100, and for § 5.617, in addition to only that part of the definition of ''responsible entity'' in § 5.100 which addresses the Section 8 program covered by § 5.617 (public housing is not covered by § 5.617), ''responsible entity'' means:

(1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

(2) For the Rent Supplement Payments Program, the owner of the multifamily project;

(3) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable ''State'' or ''unit of general local government'' or ''nonprofit organization'' as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;

(5) For the Shelter Plus Care Program, the ''Recipient'' as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the ''recipient'' as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the ''Owner'' as defined in 24 CFR 891.205;

(8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the ''Borrower'' as defined in 24 CFR 891.505; and

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the ''owner'' as defined in 24 CFR 891.305.

* * * * *

5. Revise § 5.611 to read as follows:

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in § 5.100 and § 5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.* (1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

(2) For the HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

6. A new § 5.617 is added to read as follows:

§ 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A disabled family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section:

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(c) *Disallowance of increase in annual income.*

(1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member who is

a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

7. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

8. In § 92.203, a new paragraph (d)(3) is added to read as follows:

§ 92.203 Income determinations.

* * * * *

(d) * * *

(3) The participating jurisdiction must follow the requirements in § 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive tenant-based rental assistance.

PART 200—INTRODUCTION TO FHA PROGRAMS

9. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18; 42 U.S.C. 3535(d).

10. Section 200.1303 is revised to read as follows;

§ 200.1303 Annual income exclusions for the Rent Supplement Program.

(a) The exclusions to annual income described in 24 CFR 5.609(c) apply to those rent supplement contracts governed by the regulations at 24 CFR part 215 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219), in lieu of the annual income exclusions described in 24 CFR 215.21(c) (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219).

(b) The mandatory deductions described in 24 CFR 5.611(a) also apply to the rent supplement contracts described in paragraph (a) of this section in lieu of the deductions provided in the definition of ''adjusted income'' in 24 CFR 215.1 (as contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219).

(c) The definition of ''persons with disabilities'' in paragraph (c) of this section replaces the terms ''disabled person'' and ''handicapped person'' used in the regulations in 24 CFR part 215, subpart A (as contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219). *Person with disabilities*, as used in this part, has the same meaning as provided in 24 CFR 891.305.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

11. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-1; 42 U.S.C. 3535(d).

Subpart D—Rental Assistance Payments

12. Section 236.710 is revised to read as follows;

§ 236.710 Qualified tenant.

(a) The benefits of rental assistance payments are available only to an individual or a family who is renting a dwelling unit in a project that is subject to a contract entered into under the requirements of this subpart or who is occupying such a dwelling unit as a cooperative member. To qualify for the benefits of rental assistance payments, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(b) To receive rental assistance under this subpart, the income of the individual or family must be determined to be too low to permit the individual or family to pay the approved Gross Rent with 30 percent of the individual's or family's Adjusted Monthly Income, as defined in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499). Determination of the Adjusted Monthly Income must include the deductions required for adjusted income in 24 CFR 5.611(a) in lieu of the deductions provided in the definition of ''adjusted income'' in 24 CFR 236.2 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(c) For requirements concerning the disclosure and certification of Social Security Numbers, see 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5, subpart E.

(d) The definition of ''persons with disabilities'' in paragraph (d) of this section replaces the terms ''disabled person'' and ''handicapped person'' used in the regulations in 24 CFR part 236, subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)). *Person with disabilities,* as used in this part, has the same meaning as provided in 24 CFR 891.305;.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

13. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

14. Paragraphs (d)(1) and (d)(3) of § 574.310 are revised to read as follows:

§ 574.310 General standards for eligible housing activities.

* * * * *

(d) *Resident rent payment.* * * *

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 5.609). The calculation of the family's monthly adjusted income must include the expense deductions provided in 24 CFR 5.611(a), and for eligible persons, the calculation of monthly adjusted income also must include the disallowance of earned income as provided in 24 CFR 5.617, if applicable;

* * * * *

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payment that is designated for housing costs.

* * * * *

PART 582—SHELTER PLUS CARE

15. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

16. Section 582.310 is revised to read as follows:

§ 582.310 Resident rent.

(a) *Amount of rent.* Each participant must pay rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)), except that in determining the rent of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act, the gross income of this person is the same as if the person were being assisted under title XVI of the Social Security Act.

(b) *Calculating income.* (1) Income of participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) Recipients must examine a participant's income initially, and at least annually thereafter, to determine the amount of rent payable by the participant. Adjustments to a participant's rental payment must be made as necessary.

(3) As a condition of participation in the program, each participant must agree to supply the information or documentation necessary to verify the participant's income. Participants must provide the recipient information at any time regarding changes in income or other circumstances that may result in changes to a participant's rental payment.

PART 583—SUPPORTIVE HOUSING PROGRAM

17. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

18. In § 583.315, paragraph (a) is revised to read as follows:

§ 583.315 Resident rent.

(a) *Calculation of resident rent.* Each resident of supportive housing may be required to pay as rent an amount determined by the recipient which may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses and child care expenses). The calculation of the family's monthly adjusted income must include the expense deductions provided in 24 CFR 5.611(a), and for persons with disabilities, the calculation of the family's monthly adjusted income also must include the disallowance of earned income as provided in 24 CFR 5.617, if applicable;

(2) 10 percent of the family's monthly gross income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payment that is designated for housing costs.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

19. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 1437f, 3535(d) and 8013.

20. In § 891.105, the definitions of *Annual Income, Total Tenant Payment,* and *Utility Allowance* are revised and a new definition of *Adjusted Income* is added to read as follows:

§ 891.105 Definitions.

* * * * *

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Annual income as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

* * * * *

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Utility allowance is defined in part 5, subpart F of this subtitle A of this title and is determined or approved by HUD.

21. In part 891, revise the heading of subpart E to read as follows:

Subpart E—Loans for Housing for the Elderly and Persons with Disabilities

22. In § 891.520, the definitions of *Gross Rent, Tenant Rent, Total Tenant Payment, Utility Allowance,* and *Utility Reimbursement* are revised and a new definition of *Adjusted Income* is added to read as follows:

§ 891.520 Definitions applicable to 202/8 projects.

* * * * *

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Gross rent is defined in part 5, subpart F of subtitle A of this title.

* * * * *

Tenant rent means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Utility allowance is defined in part 5, subpart F of subtitle A of this title and is determined or approved by HUD.

Utility reimbursement is defined in part 5, subpart F of subtitle A of this title.

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

23. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

24. In § 982.201, paragraph (b)(3) is revised to read as follows:

§ 982.201 Eligibility and targeting.

* * * * *

(b) * * *

(3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under paragraph (b)(1) of this section and for targeting under paragraph (b)(2)(i) of this section. In determining annual income of an applicant family which includes persons with disabilities, the determination must include the disallowance of increase in annual income as provided in 24 CFR 5.617, if applicable.

* * * * *

Dated: July 25, 2000.

Andrew Cuomo,

Secretary.

[FR Doc. 00–20802 Filed 8–18–00; 8:45 am]

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Federal Register

Monday,
August 21, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 11
General Rulemaking Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. FAA 1999–6622; Amendment No. 11–46]

RIN 2120–AG95

General Rulemaking Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is issuing this final rule in response to President Clinton's mandate to Federal agencies to make communications with the public more understandable. The FAA is revising and clarifying its rulemaking procedures by putting them into plain language and by removing redundant and outdated material. Rulemaking procedures are an important way for the public to interact with FAA, and it is important that these procedures be easy to understand and follow.

DATES: Effective September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

The FAA is revising part 11 by eliminating redundant and outdated information that is not necessary to public participation in the rulemaking process. We also are removing supplementary information available on request from FAA, such as internal delegations of authority. This change will help FAA keep its procedures current because we will not have to revise part 11 to update supplementary information not critical to your participation in the rulemaking process.

Because we are eliminating redundant material from subparts A through E, we are folding all its rulemaking procedures into one subpart. This rulemaking consolidates material on different aspects of our regulatory program, clarifying that there is really only one basic process the public must follow to interact with our regulatory program. We have eliminated some provisions that are obsolete. We explain these changes in more detail in the following paragraphs. Finally, we have updated our list of information collection clearance numbers previously designated subpart F, now redesignated subpart B. We did not include new subpart B in the proposal, but we include it here.

General Substantive Changes From the Proposed Amendment of Part 11

Plain Language

In response to the June 1, 1998, Presidential Memorandum regarding the use of plain language, FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. The proposed revision to part 11 was the FAA's first significant attempt to write rules in plain language. The FAA received numerous favorable comments on the clarity and style of the document. We will continue with this effort to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

We hope this new plain language format will help readers find requirements quickly and understand them easily. We reorganized and reworded the regulation using plain-language techniques not usually found in the **Federal Register** and the Code of Federal Regulations (CFR). We used undesignated center headings to cluster related sections within subpart A. We shortened sections, paragraphs, and sentences, and where possible used simple words to speed up reading and improve understanding. We put our section headings in the form of questions to help direct the readers to specific material they are interested in. We used personal pronouns to reduce passive voice and draw readers into the writing.

Petition for Reconsideration of Final Rules

We have removed any reference in part 11 to petitions for reconsideration of a final rule. The previous rule discussed this procedure only for final rules for the designation of controlled airspace and for airworthiness directives (see old rule §§ 11.73 and 11.93). Actually, under both the previous part 11 and this amendment, you may ask FAA to reconsider any agency final rule by following FAA rulemaking procedures. For example, if FAA issues a final rule accompanied by a request for comments, you may submit arguments why FAA should not have adopted the final rule. If we agree, we may issue another final rule repealing or revising the earlier rule.

In addition, you may file a petition for rulemaking to repeal or revise a final rule we adopted. If we agree with you that we should not have adopted the final rule, we may issue another final rule repealing or revising it. If you persuade us that the final rule was not reasonable in light of the record, including the comments we received, we may do this by issuing an immediate final rule to correct the problem. If you provide information that we didn't have before, we may need to provide others with an opportunity for others to comment before issuing a revision or repealing the rule.

Petitions for Rulemaking and Exemption

In proposed § 11.63 we provided an address at FAA to send your paper and electronic petitions for rulemaking and

exemption. In the final rule, these addresses have been changed to the Department of Transportation's Docket Management System (DMS), U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001 for paper submissions, and the DMS web page at http://dms.dot.gov/ for electronic submissions. See the section-by-section discussion on § 11.63 that follows for further information. Additionally, the rule no longer discusses where to file petitions for exemption from the medical standards in part 67, since exceptions to these standards are now handled by special issuances under § 67.401.

We removed any reference in this rule to the publication of summaries of petitions for rulemaking for public comment because we do an initial screening when we receive your petition. In circumstances where your petition does not meet our criteria for action, we will deny your petition without delay. In deciding whether to take action on your petition, we consider: the immediacy of the safety or security concerns you raise; their priority relative to other issues we must address; and the resources we have available to address these issues. We also may decline to handle your petition as a separate action if we are already addressing the issues you raise. For example, if we have tasked the Aviation Rulemaking Advisory Committee (ARAC) to study the general subject area of your petition, we may ask ARAC to review and evaluate your proposed action as well.

If your petition for rulemaking meets these criteria for action, and we are not otherwise addressing the issues you raise, we will respond by issuing a Notice of Proposed Rulemaking (NPRM) no later than 6 months after we receive your petition. In such a case, we invite public comment on the proposed rule, rather than on your petition itself.

The FAA no longer publishes summaries of denials of petitions for rulemaking, in order to preserve resources for processing priority rulemaking actions.

Several commenters stated that we should reintroduce FAA's practice of notifying petitioners by mail of the disposition of their petitions. Although this notification was stated in old §§ 11.53(b) and 11.91(b), we inadvertently left this off our proposal. We never intended to eliminate this practice and will continue to notify petitioners directly. We have added a statement to this affect in the beginning of § 11.73 for petitions for rulemaking and new § 11.91(a) for petitions for exemption.

Petitions for Reconsideration of Denied Petitions

Final part 11 also creates a single, simplified section to explain how to ask FAA to reconsider a denial of a petition for rulemaking or exemption. It is a simplified version of the old rule that applied to denials of exemption (old § 11.55(d)). To get FAA to reconsider a denial, you must present a significant new fact and tell us why you didn't include it in your original petition. Or you have to show us how we made a significant factual error or misapplied a law, regulation, or precedent. If you can't do this, we won't be able to reconsider your petition.

Information About Delegations

We have removed almost all the references to internal FAA delegations relating to rulemaking actions. A number of these delegations in old part 11 are out of date. We will publish a separate notice in the **Federal Register**, telling you who exercises the authority of the Administrator in rulemaking matters. Doing this by notice instead of regulation will make it easier for us to keep this information current. You also can get this information from us at any time by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Airspace Designations

The procedures for designation of airspace previously in subpart D of part 11 are a variation of the other rulemaking procedures covered elsewhere in part 11. Since final part 11 consolidates all our rulemaking procedures in one subpart, the only material remaining in part 11 specific to designating airspace is the material in new § 11.77, listing what information you must provide when you petition FAA to establish, amend, or revoke an airspace designation. This information is in addition to what you must provide with any other petition for rulemaking.

General Discussion of Comments

The NPRM appeared in the **Federal Register** on December 14, 1999, (64 FR 69856) and the public comment period closed January 28, 2000. We received comments from 21 different commenters. All commenters were generally supportive of the proposal. Commenters included aircraft manufacturers, operators, pilots, organizations representing these groups, and individuals. Commenters praised the NPRM format for its potential to enhance regulatory clarity and communication with the public and for removing redundant and outdated information. Some commenters expressed specific concerns. We address these in detail in the following discussion.

First, we will discuss general comments and comments not specific to one section, then we'll discuss more specific comments organized by section.

Plain Language

Of the 21 individual commenters, 18 addressed the plain language format of the proposal. Without exception, they were supportive of the format. The following two examples are typical. ''Three cheers to the FAA on your efforts to switch to plain language. I feel that it will increase safety, because the aviation community will be able to understand exactly what is expected of them and what they must do. Bravo.'' ''I am a pilot and find this information to be much easier to read and comprehend than any other. It is organized and easy to follow. Hope to see more like it.''

Several commenters, while positive about the plain language presentation in general, were skeptical about certain specific aspects. One commenter noted that ''Plain language conversion lends itself to a simple administrative regulation such as FAR Part 11. However, providing similar treatment to more complex parts such as 23 or 121 may prove quite challenging. Yet, this is an effort that must be undertaken for the sake of clarity and understanding for both regulator and regulated.''

Two commenters stated that they do not like the question and answer format in section headings. For example, one said ''the question-and-answer format used for section headings in the proposal is an atrocious construction and an offence [sic] to the reader. Using this technique presumes that the reader cannot fathom simple declarative section headings. Further, it complicates the structure of the heading, impairs understanding and reduces the ability of the reader to find subject headings.'' Another stated that ''[we find] the question and answer (Q&A) format proposed in the regulations to be a barrier to efficient use of proposed new part 11. The Q&A format does not lend itself to use of the table of sections as a research tool; rather, this format forces the reader to read the table of sections like a novel, and inhibits quickly reviewing the section headings to locate required information. The Q&A format also imposes on proposed new part 11 a simplistic tone that is both at odds with the professional rigor and discipline that characterizes the revised section material itself, and which [our]

members who reviewed the NPRM found pedantic and annoying.''

One additional commenter stated that the question-and-answer format did not work for some of the specific sections, especially the ''Applicability'' section. On the other hand, three commenters spoke in support of the question-and-answer aspect of the format. For example, one stated ''I like your use of the question-answer format. In the Coast Guard, we have found that even lengthy, highly technical regulations benefit from this format. On behalf of your readers, keep up the good work.''

Other suggestions included making the section headings shorter. While we understand that readers very familiar with the material may not need long informative headings, we believe they are especially helpful to new readers. Informative headings serve as guideposts to help readers navigate through a complex document such as a regulation. Therefore, we have decided to retain the longer headings.

The FAA appreciates the overwhelming support of the general plain language format. We agree that this format is a better way to communicate with our various reader groups. While our resources will not enable us to write all new documents in this format, we intend to move aggressively to make all our written material easier to understand and more reader-friendly. Regarding the question-and-answer format, headings as questions are not in any way intended to talk down to the reader. Public reaction to plain language regulations of other agencies that begin with questions has been generally favorable, especially from first time readers. Questions have a number of advantages. They ensure that a heading fully informs the reader of the content of the section. Since their scope is usually narrower than the traditional two or three word headings, sections tend to be shorter—an advantage to the reader. When the drafter thinks in terms of what questions the reader will ask, the information provided is more comprehensive and logically presented. We believe question headings are particularly helpful for general rules that reach a broad audience, such as part 11.

However, we do plan to use question headings with discretion. Question headings are not necessarily right for every subject matter. While we believe they are appropriate for the material presented in part 11, they may not work well for other, complex technical parts of the regulations. We will evaluate the subject matter carefully before we use them in our regulations.

Regarding writing most section headings as questions, but making an occasional exception, as one commenter seems to suggest, readability research shows that it's not a good idea to switch back and forth between heading types. Switching heading types can be confusing to the reader. So, while we agree that in a few cases—a definitions section would be a prime example—a question heading may not seem beneficial, the need to be consistent in heading type is important. Therefore, if we decide that a question-and-answer format is overall the best approach for a particular rule, we generally will use question headings for all sections.

Reorganization of Definitions

Two commenters made essentially identical suggestions that FAA create a special section for definitions at the beginning of part 11. They suggested that a single section containing the definitions of the various types of rulemaking actions would result in a more concise and easier to understand regulation. They recommended ''the FAA consolidate the definitions contained in §§ 11.13, 11.17, 11.19, 11.23, 11.25, 11.29 into a single section entitled 'Definitions'.'' Other commenters suggested we add additional definitions.

It has been FAA's practice to place definitions that apply to more than one CFR part of our regulations in 14 CFR part 1. Where a definition is needed only for a single CFR part we have placed it at the beginning of the part, along with others that apply just to that part. Having them at the beginning of the part is sometimes more convenient for the reader. It can also alert the reader that some terms in the part have a special meaning. Therefore, we have accepted this suggestion to place the definitions at the beginning of the part. However, we do not agree that it's a good idea to put all these definitions in one section. We believe this subject matter lends itself to separate sections for each term, principally because some of the sections are not simple definitions but expand on a topic and include regulatory material. We have moved all the ''what is'' questions closer to the beginning of the part and included a centered heading ''Definition of Terms'' to assist the reader looking for a specific definition. We have also added definitions of petition for exemption, petition for rulemaking, and special condition. One commenter suggested we define the words ''frivolous'' and ''insubstantial.'' We do not believe this is necessary. We give these words no special meaning beyond the definitions found in any standard dictionary.

Because we have moved the definitions to the beginning of the part, and added three additional definitions not found in the proposed rule, we have renumbered both the definitions sections and later sections in the rule, up through § 11.40. The following section-by-section discussion notes the number of each section in the proposed and final versions of the part.

Ex Parte Issues

A number of commenters reacted strongly to our proposal to remove the statement in old § 11.65 that said an interested person is entitled to discuss or confer informally with appropriate FAA officials concerning a proposed action. Section 11.65 dealt only with issuing NPRM's for airspace assignment and use. It never applied generally to FAA's rulemaking process. Since this statement on its face purports to deal with requests made before, during, and after the comment period for a proposal, it is contrary to DOT ex parte policy. That policy prohibits non-public contacts with DOT officials once an NPRM has been issued. We said that where discussion of a proposal is appropriate, FAA would hold an open public meeting.

Our discussion of our proposed action was too brief and led many commenters to conclude that we proposed to prohibit all informal contacts with the public during the development of regulations. These contacts are commonly known as ''ex parte contacts,'' since usually only one party to an issue is present at the meeting with the agency. DOT policy does not prohibit all such public contacts. In fact, DOT policy encourages agencies to contact the public directly when we need factual information to resolve substantive questions. It also encourages agencies to be receptive to proper contacts from persons affected by or interested in a proposed action.

Under some circumstances an ex parte contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety could affect public confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of ex parte contacts permitted and the procedures we follow depend on when during the rulemaking process the contact occurs. To ensure that the public understands what guidelines FAA follows in making or entertaining public contacts during rulemaking, we have added an appendix to part 11,

setting out DOT policy on ex parte contacts.

DOT policy encourages FAA to collect relevant information from regulated parties before we issue an NPRM. However, once the public comment period begins and the rulemaking docket is open to accept written communications, DOT policy discourages oral communications on the proposal. Some commenters generally felt we were being overly restrictive and extreme when compared to other federal agencies. One organization said that the elimination of an individual's option to contact FAA personnel regarding the provisions of a proposed rule would severely curtail the public's ability to provide objective comments to FAA. We disagree with the commenter, since there is very little relevant information that cannot be presented to the public docket. The commenter also stated that holding public meetings, which it feels are a pulpit for narrow special interests, is not always possible. However, we have not had significant problems with holding public meetings where oral comments on a proposal would be helpful.

One organization acknowledges that DOT ex parte policy prohibits non-public contacts with DOT officials once an NPRM has been issued, but maintains that such non-public contacts provide a vital link between the flying public and appropriate authorities within FAA. It points out that aircraft type-clubs, aircraft owners and operators, and mechanics regularly use such ''non-public'' contacts as an informal way to gain the facts they need to provide objective comments to FAA rulemaking actions. The commenter asserted that elimination of this link effectively denies the public access to the rulemaking process.

DOT policy is designed to balance the need for collecting information with the benefit of an open process. It is essential that all interested persons have access to the views presented to FAA by other persons with competing interests. Every NPRM includes a contact person whom the public can call for information. However, this person cannot accept comments. When FAA receives an oral contact requesting information in addition to that provided in an NPRM, we provide only information that is publicly available to other interested parties.

This free exchange of ideas, facilitated by the public docket, ensures that we will make a well-informed decision. When FAA needs additional factual information to understand a comment or to support our analysis (for example, the availability of parts), we may on our own contact an interested person. We make a record of that contact and enter it in the rulemaking docket, and, if it influences our decision, we discuss it in the preamble to the final rule.

A commenter said that caution should be exercised in prescribing an unduly broad definition of ex parte communications. The commenter read the proposal as declaring that all non-public contacts with FAA officials once an NPRM has been issued constitute illegal ex parte communications. The commenter asserted that past practices generally permitted senior agency officials to docket a summary of discussions regarding a proposal in certain circumstances, rather than providing for an absolute bar of those discussions. The commenter urged FAA to maintain general procedures permitting free flow of information to the extent necessary to yield informed rulemaking decisions and in a manner that satisfies the requirements of the Administrative Procedure Act.

DOT policy strongly discourages ex parte contacts after the comment period is closed. Although there is no absolute bar to discussions regarding a regulatory proposal, FAA is generally cautious when meeting with parties interested in a proposal. If a meeting set up for another purpose turns to the topic of an NPRM, we caution the participants that we cannot discuss the proposal outside of a public meeting and invite them to file written comments to the docket. We think the written comment process and public meetings, where appropriate, are sufficient to ensure the free flow of ideas and an informed decision-making process.

Communications Regarding Petitions

One commenter was concerned that we were prohibiting contacts regarding petitions for rulemaking or exemption. The commenter stated it would be beneficial for the individual or company that has filed a petition for exemption to be able to keep in contact and communicate with the agency on the status of the exemption request. The commenter also stated it would be helpful to be able to comment or meet with personnel to discuss problems with the request and to provide facts to solve problems as they come up. We agree in part with the commenter. While FAA cannot advise petitioners on how to write petitions, or negotiate with petitioners our final action on their petitions, we have always sought information directly from petitioners where we need that information to process a petition for exemption. When we do this, we also put a record of the contact in the rulemaking docket.

Protecting Sensitive Information

Another commenter believed that meetings on some subjects, such as aviation security rules, should not be held in public. The commenter stated that any meeting can be held in private as long as the agency places a record of the meeting in the public docket, including general information that the meeting took place and what was discussed without detailing the sensitive information. The FAA in fact does not discuss security sensitive information in public. We even provide a separate confidential docket for some rulemakings, where commenters can supplement their public comments with sensitive information we agree we should protect.

In sum, we have not made any changes to the rule text itself regarding ex parte matters. We have added an appendix to part 11 to explain our ex parte policy.

Making the Process Open—the Docket Management System

The Secretary of Transportation has directed the Office of the Secretary (OST) and the DOT operating administrations to consolidate their separate paper-based docket facilities into a single, central facility and convert to an electronic image-based Docket Management System (DMS). In 1996, the Department changed the filing requirements for the OST docket by issuing a final rule, ''Revised Filing Procedures for the OST Docket'' (61 FR 29282). This final rule amended 14 CFR 302. The rule instructed the public how to submit items to DMS, then called the Docket Management Facility. This change enabled the Department to provide better service and access to the public and to government users. The FAA is currently using DMS to docket rulemaking projects originating in FAA headquarters and regions, other than airworthiness directives and certain airspace actions. The FAA is working toward consolidating the FAA Rule Docket and its regional dockets into DMS. The consolidation will eliminate duplication, improve records management, enhance docket security, and provide easier public access by creating a single point of entry. An electronic image-based docket will provide public and government users with quicker access to docketed information, more sophisticated search capabilities, and electronic transmission of information to and from DMS. By transitioning to DMS, FAA will be able to accept electronic submission of petitions and the public will also be

able to research dockets remotely using the Internet.

Special Conditions

We removed the discussion of special conditions previously in § 11.28 from the proposed version of part 11. The reason we gave for removing the section was that we follow the same rulemaking procedures for special conditions as we do for ''general rules.'' This statement may be misleading. Special conditions are not general rules, since they apply to a particular aircraft design. Because they are rules of ''particular applicability'' under the Administrative Procedure Act, the act does not require public notice and comment before we issue them. However, as we said in the notice, FAA does follow notice and comment procedures anyway, because we may receive useful information. We do not follow other procedures associated with general rules.

We have decided that the reader may find it helpful to have some discussion of special conditions in part 11. We have included a definition of a special condition (new § 11.19). We also inserted a section (new § 11.38) stating that we generally follow notice and comment procedures and describing the situations where we do not do this.

The special conditions section that we removed from part 11 noted that FAA does not hold public hearings, argument, or formal hearings before issuing a special condition. Although the procedures in this revised part 11 regarding public hearings would theoretically apply to special conditions, it continues to be unlikely that we would grant a request for a public meeting. In most cases a meeting would not provide more information than written comments. Also, it would be difficult to protect the proprietary information involved in the certification process in a public discussion.

Other General Issues

A number of commenters encouraged us to clarify and simplify other FAA regulations. We are in the process of doing this as our resources permit. One commenter specifically recommended that we work towards ''the important objective of performance-based regulations.'' We are also doing this where the subject matter is appropriate, as we have been directed by the President's Executive Order 12866 on rulemaking.

Another commenter suggested that some specific sections be combined into one larger section. We have looked at the entire proposed layout of part 11 to decide whether some sections could be combined or rearranged. However, we believe it would be better to follow the plain language principle that shorter sections are easier to read and absorb.

Several commenters caught grammatical errors or inconsistencies in the proposed version of the part. We have fixed these problems but have not described them in this preamble. You can see all these comments on the Department of Transportation's electronic docket at http://dms.dot.gov, under docket number FAA–1999–6622. We appreciate commenters' taking the time to provide us with this help.

Section-by-Section Discussion

Section 11.1 To what does this part apply?

This section explains what the part addresses. Aside from the issue about headings that we address in the ''General Discussion of Comments'' part of this preamble, we received no comments on this section. We adopt it as proposed.

Section 11.3 (Proposed § 11.13) What is an advance notice of proposed rulemaking?

Section 11.5 (Proposed § 11.17) What is a notice of proposed rulemaking?

Section 11.7 (Proposed § 11.19) What is a supplemental notice of proposed rulemaking?

Section 11.9 (Proposed § 11.23) What is a final rule?

These first several sections describe particular types of rulemaking documents. In response to comments about definitions, we've placed all definitions near the beginning of the part and have inserted a centered heading ''Definition of Terms'' immediately before § 11.3. We've discussed definitions in the ''General Discussion of Comments'' part of this preamble.

One commenter suggested a minor wording change for clarity to proposed § 11.23 (redesignated § 11.9). The FAA has accepted this suggestion in part, and has added the word ''will'' to the last sentence. Other than that minor change, and comments suggesting a reorganization of definitions, we received no comments on these sections and adopted them as proposed.

Section 11.11 (Proposed § 11.29) What is a final rule with request for comments?

This section defines how a final rule with request for comments differs from other final rules, on which we do not invite comment. We explain in the definition that we usually invite comment on these rules because we did not issue an ANPRM or NPRM. We also note that a final rule not preceded by a notice is commonly called an ''immediately adopted final rule.'' We had neglected to provide a definition of this rule type in the proposed rule.

One commenter suggested we change the wording of the heading to ''immediately adopted'' instead of ''direct final.'' Apparently the commenter meant to refer to proposed § 11.25 (adopted as § 11.13), and we have addressed this comment in the discussion of that section.

The same commenter suggested moving this section to a consolidated definitions section. That comment is addressed in the General Comments part of this preamble.

Section 11.13 (Proposed § 11.25) What is a direct final rule?

This section defines a direct final rule, which is a type of final rule with request for comments not preceded by an NPRM. We issue a direct final rule when we do not expect to receive any adverse comments, and so notice is unnecessary. If we do receive an adverse comment or notice of intent to file an adverse comment, we withdraw the final rule before it becomes effective and can issue an NPRM.

Proposed § 11.25 described what types of comments FAA considers adverse, but in the final rule we have moved this discussion to § 11.31 where we describe the procedures we follow for these rules. We believe it fits better there.

A commenter on those procedures suggested we take out the word ''generally'' in reference to the 60-day time period between publication and a direct final rule's effective date, on the basis that a consistent time frame is desirable. While we agree that a consistent time frame is preferable, there may be some circumstances when a shorter or longer period is necessary. We decline to accept this comment.

The same commenter suggested we define the words ''frivolous'' and ''insubstantial.'' As noted in the discussion of definitions, we do not believe this is necessary. We give these words no special meaning beyond the definitions found in any standard dictionary.

The same commenter suggested we change the heading of this section to refer to ''immediately adopted'' final rules rather than ''direct'' final rules. Any rule for which we do not issue an NPRM is commonly referred to as an ''immediately adopted final rule.'' Although this expression does describe direct final rules, only a small percentage of rules issued without

notice are direct final rules. Therefore, it would not be correct to change the section heading as the commenter requests.

Section 11.15 (New) What is a petition for exemption?

Section 11.17 (New) What is a petition for rulemaking?

In proposed § 11.61 we used a table to describe these types of petitions. In response to comments about definitions, we've added these two new definitions for petitions for exemption and petitions for rulemaking near the beginning of the part and have inserted a centered heading ''Definition of Terms'' immediately before this section. We've discussed definitions in the ''General Discussion of Comments'' part of this preamble. We have expanded § 11.61 and discuss the scope of petitions for exemption and petitions for rulemaking.

Section 11.19 (New) What is a special condition?

We did not include the section on special conditions in our proposed part 11. The FAA issues special conditions when we find that the airworthiness standards for a proposed aircraft, engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature. The reason we gave for omitting the section was that we follow the same rulemaking procedures for special conditions as we do for ''general rules.'' This statement may be misleading. Special conditions are not general rules, since they apply to a particular aircraft design. Because they are rules of ''particular applicability'' under the Administrative Procedure Act, the act does not require public notice and comment before we issue them. However, as we said in the notice, FAA does follow notice and comment procedures anyway, because we may receive useful information. We do not follow other procedures associated with general rules.

We have decided that the reader may find it helpful to have some discussion of special conditions in part 11. We have included a definition of a special condition. We also inserted a section (new § 11.38) stating that we generally follow notice and comment procedures and describing the situations where we do not do this.

Section 11.21 (Proposed § 11.3) What are the most common kinds of rulemaking actions for which FAA follows the Administrative Procedure Act (APA)?

This section describes the major types of rulemaking actions FAA undertakes under the Administrative Procedure Act (APA). One commenter suggested changing this section to include Advisory Circulars (AC) and to clarify what FAA documents are not covered by this rule or by the APA. The FAA believes that it could be misleading to list in part 11 those documents, such as advisory circulars, that are not mandatory. Although advisory circulars, for example, cannot impose new requirements in addition to those in the regulations, they may contain sections that paraphrase the regulations. Also, to the extent that a person chooses to follow an acceptable means of compliance explained in an AC, that method becomes mandatory for that individual.

Another commenter stated that use of the abbreviation ''APA'' in the title of the section was confusing. We agree, in this final version we've written out the name of the Act. The same commenter noted that in proposed § 11.3(a)(3), ''Airspace Designations'' should be ''Airspace designations'' since these are generic airspace designations rather than a specific document titled Airspace Designation. We disagree, since we use this term to refer to a specific type of designation, and have long used it as a proper noun. We have not accepted this suggestion.

We've changed the word ''major'' in paragraph (a) to ''common,'' to be consistent with the heading of the rule.

We have omitted proposed paragraph (b) from this final version, and renumbered the paragraphs accordingly. Proposed paragraph (b) addressed exemptions. We have addressed exemptions more fully later in this regulation. Exemptions are not ''common rulemaking actions'' so we should not address them here.

Other than omitting proposed paragraph (b), changing the title of the section to spell out the name of the act, and changing ''major'' to ''common'' in paragraph (a), we adopt this section as proposed.

Section 11.23 (Proposed § 11.5) Does FAA follow the same procedures in issuing all types of rules?

This section states that in general, FAA follows the same procedures for all major rule types. It lists the few minor differences in FAA's rulemaking procedures. We received no comments on this section. We have removed the word ''three'' from the heading, simply to give FAA flexibility in the future should we need to use some currently unanticipated form of rulemaking. Otherwise, we adopt it as proposed.

Section 11.25 (Proposed § 11.11) How does FAA issue rules?

This section describes the process FAA follows to issue rules. It lists the kinds of rulemaking documents we issue, as well as the types of information generally found in these documents.

One commenter suggested different language for proposed § 11.11(a). As proposed, the section said FAA may issue some type of rulemaking document during the rulemaking process. The commenter thought the section should state that FAA will issue a rulemaking document, and publish it within 30 days. The commenter doesn't specify from what point it wants FAA to count the 30 days.

The proposed version of this section did not mean that we would not issue any rulemaking document. Rather, we meant that we had the authority to issue whichever type of document was appropriate. To clarify our meaning, we have accepted this suggestion and changed ''may'' to ''will'' in the final rule. However, see the previous discussion of the rulemaking docket, in the section on Petitions for Rulemaking and Exemption in our discussion of ''General Substantive Changes from the Proposed Amendment of Part 11.'' While resource concerns prevent us from making a commitment to make every document available within 30 days, we believe our expanded use of the electronic docket will make materials available to the public more quickly than currently is the case.

The same commenter thought proposed § 11.11(b)(4) was in conflict with the reason we provided for the elimination of § 11.65 of the old rule, which dealt with an interested person's ability to discuss or confer informally with appropriate FAA officials concerning a proposed airspace designation action. The commenter asked for clarification of the intent of paragraph (4), which provides that FAA's rulemaking documents will include a person to contact if a reader has questions about the document. The commenter went on to suggest that any discussion with FAA about a rulemaking document be in the form of a written document accessible to other interested parties.

The FAA does not believe this provision conflicts with the elimination of § 11.65. This provision is meant to provide the public with a specific person to contact if they have questions about what a rulemaking document means, what FAA's schedule for the document is, or other general questions about the process. It is not intended to provide a contact that can enter into

detailed discussions about what a proposal should say. We've discussed ex parte issues in the General Discussion of Comments part of this preamble. The FAA agrees with the commenter's second point, however. We believe all substantive comments on a proposed rulemaking should be available to other commenters. We are taking steps to make comments available to all through the DOT's electronic docket. We have added a statement to that affect in the final version of this section. We've discussed the electronic docket above, in the section on Substantive Changes part of this preamble.

The final version of this section differs from the proposed version in that we've changed ''may'' to ''will.'' We've also added a statement about making documents available through the electronic docket, and provided the Internet address. Additionally, we made minor wording changes in the second sentence to clarify that this section covers changes to existing regulations as well as new regulations.

Section 11.27 (Proposed § 11.15) Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

This section discusses the role of the Aviation Rulemaking Advisory Committee (ARAC) in our regulatory process. It also provides that FAA may establish other rulemaking advisory committees as needed to focus on specific issues.

One commenter recommended this section prohibit the chairing of rulemaking advisory committees by a foreign government or a company owned by a foreign government. The FAA declines to add this material to the regulation. Many of the issues ARAC examines for FAA involve harmonization of FAA's rules with the rules of other nations. Harmonization of FAA and Joint Aviation Authorities (JAA) of Europe rules is in the best interests of the flying public and international aviation safety. It is a high priority of FAA's programs. Foreign nations must play an important role in any committee examining harmonization issues. To achieve the goal of harmonization, we seek industry advice and recommendations by using the ARAC. The JAA seeks similar input from the JAA study group, a European industry advisory body. Administratively, ARAC uses working groups to carry out its work. Since harmonization is a collaborative international effort, FAA uses working group co-chairs representing U.S. and European interests as a means for reaching consensus on technical matters. This is a long-standing practice of ARAC.

However, FAA does not allow foreign governments to chair a rulemaking committee. Contrary to the commenter's opinion, non-U.S. citizens do not develop proposals that regulate U.S. citizens. These international working groups provide recommendations to the ARAC which, in turn, approves or disapproves a particular action. ARAC provides a recommendation to the FAA after public deliberation. The FAA makes the final decision to adopt or amend a particular rule. It does so through the public comment procedures outlined in this part.

Another commenter stated that when FAA receives a recommendation from the ARAC, FAA should publish an NPRM if we accept the recommendation. We should also publish an explanation of our denial, if we do not accept the recommendation, just as we would do with a comment from the public. The FAA disagrees with this comment. The ARAC is chartered to function with FAA in an advisory capacity. A recommendation from ARAC is not the same as a comment from the public.

For the reasons discussed above, FAA declines to change this section in response to comments, and we adopt it as proposed.

Section 11.29 (Proposed § 11.21) May FAA change its regulations without first issuing an ANPRM or NPRM?

This section discusses the circumstances under which FAA might adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM.

One commenter suggested FAA should define the term ''immediately adopted.'' We've discussed this under final § 11.13.

Another commenter suggested that, while the FAA may issue a final rule without an NPRM in special circumstances, we should tell the reader that this is not our ordinary practice. We agree and have added an introductory sentence clarifying this point.

This section includes a statement that an example of a final rule without notice is one issued in response to a safety emergency. One commenter suggests that we should mention in this section ''significant airworthiness emergencies.'' We don't think we need to list the kinds of emergencies for which we could use an immediately adopted rule, although an airworthiness emergency is clearly one of them. Agencies have the authority to issue any emergency rule under the Administrative Procedure Act. We don't need an exhaustive statement of the possibilities in part 11 to allow us to issue these rules.

One commenter suggested that we limit the criteria for adopting final rules without comment to editorial changes or corrections. We believe that would be too restrictive. Sometimes we have to adopt a final rule without comment because of a clear and immediate safety hazard or for some other reason. Therefore we do not accept this comment.

We've also changed this section by removing reference to an ''immediately adopted'' rule. Commenters were apparently confused about this term. As noted in the discussion of final § 11.13, this term is not an accurate description of these rules, and indeed some of them are not adopted immediately. We have not added any reference to ''immediately adopted'' rules in this section of the final rule, although we do mention it in § 11.11.

Section 11.31 (Proposed § 11.27) How does FAA process direct final rules?

This section describes how FAA processes direct final rules when we receive no adverse comments, and when we do receive adverse comments.

One commenter suggested that we remove the word ''generally'' from the reference in the section to the 15-day time period within which we publish a **Federal Register** notice confirming that we are adopting a direct final rule. The commenter stated that it was important that FAA provide timely notice. While we agree we need to provide timely notice of rules we adopt, and we strive to publish these notices within 15 days, it is not always possible to achieve this goal. However, we will publish this notice before the effective date of the direct final rule. We decline to adopt this suggestion, it is too inflexible and does not allow us to address special circumstances.

The same commenter suggested we insert the words ''in a timely manner'' where the proposal stated that we will ''publish a confirmation document . . . before the effective date of the direct final rule.'' We do not believe this is necessary. Our commitment to publishing this notice before the effective date of the direct final rule ensures that the notice will be timely. In practice, we do strive to publish this notice as soon as possible.

We have also moved the discussion of what FAA considers an adverse comment from proposed § 11.27 to § 11.31. We believe it fits better here. We have not changed this discussion substantively. When we receive an

adverse comment about a direct final rule, we do not implement the rule. Rather, we advise the public by publishing a document in the **Federal Register** before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

We have made two additional word changes. To be consistent with the pattern we've followed throughout the rule, we've replaced ''We'' with ''FAA'' in the title of this section. In § 11.31(c) (proposed § 11.27(b)), in reference to withdrawing a direct final rule in response to an adverse comment, we've changed ''this document will withdraw the direct final rule'' to ''this document may withdraw the direct final rule.'' We are making this change because in some cases, we may be able to resolve the adverse comment without withdrawing the rule. For example, we may publish a clarification of the rule addressing the adverse comment. This is a change from the previous rule (§ 11.17), which said that ''a document withdrawing the direct final rule will be published in the **Federal Register**. * * *''

Section 11.33 (Proposed § 11.31) How can I track FAA's rulemaking activities?

This section lists several ways the public can find information about FAA's rulemaking.

One commenter suggested that this section contained too many levels, and was confusing. The commenter suggested breaking up the section. While we have decided not to break up the section, we have edited it to remove excess words. This allowed us to reduce the number of levels in the section. This editing did not result in any substantive changes.

Another commenter suggested changing the heading of the section to make it a shorter statement. We've covered this issue in the Plain Language discussion in the General Discussion of Comments part of this preamble.

Additionally, we have deleted from the final version of this section reference to particular types of rulemaking actions that you can find in the electronic docket. Since we published the proposed rule, we have been exploring ways to make our rulemaking documents readily available to the public. We intend to expand the types of documents available through the electronic docket as soon as we can. Since we are not sure at this time exactly when we will be able to include each type of document, we have eliminated any list of specific document types from the regulation. We have added information about where to call if you can't find the material in the electronic docket.

Section 11.35 (Proposed § 11.33) Does FAA include sensitive security information and proprietary information in the Docket Management System (DMS)?

As proposed, this section addressed only sensitive security information. In response to comments, we have expanded the section to cover proprietary and confidential information.

As in the proposal, this section states that you should not submit sensitive security information to the public docket. It states that when FAA believes we need this type of information, we will ask for it and provide a separate non-public docket. As we stated in the proposal, for all dockets involving security requirements, we review comments as we receive them, and if we find that a comment contains sensitive security information, we remove that information before placing the comment in the docket.

One commenter recommended that we add ''proprietary'' business information to the title and exclude it from the public docket. We have accepted the addition of ''proprietary information'' to the title of this section. However, FAA seldom receives proprietary information with comments. If we are aware that information submitted is proprietary, we do not file it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

We have changed the heading of this section to include a reference to proprietary information. Also, we have written out Docket Management System, instead of abbreviating it.

Section 11.37 (Proposed § 11.35) Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?

This section tells readers whom to contact to get information about **Federal Register** documents originating in a region.

The FAA received no comments on this section. However, we have changed the final version to indicate that many of these actions will be included in the Department of Transportation's electronic docket.

Section 11.38 (New) What public comment procedures does FAA follow for Special Conditions?

As we note above in our discussion of § 11.19, we have decided that the reader may find it helpful to have some discussion of special conditions in part 11. This new section states that we generally follow notice and comment procedures and describes the situations where we do not do this.

The special conditions section we removed from part 11 noted that FAA does not hold public hearings, argument, or formal hearings before issuing a special condition. Although the procedures in this revised part 11 regarding public hearings would theoretically apply to special conditions, it continues to be unlikely that we would grant a request for a public meeting. In most cases such a meeting would not provide more information than written comments. Also, it would be difficult to protect the proprietary information involved in the certification process in a public discussion.

Section 11.39 (Proposed § 11.37) How may I participate in FAA's rulemaking process?

This section describes the ways you can participate in FAA rulemaking—commenting on public rulemakings, filing a petition for rulemaking, and participating in a public meeting.

One commenter suggested we replace the words ''advanced notice of proposed rulemaking'' and ''notice of proposed rulemaking'' with their abbreviations, to be consistent with other sections of the rule. We agree and have made the change.

We have also added a statement at the end of paragraph (a) to emphasize that commenters should follow the directions for commenting found in each rulemaking document. The FAA intends to make increasing use of the Department of Transportation's electronic docket. Over time readers will find more and more documents referencing the docket as the preferred method of taking comments.

Finally, we have eliminated paragraph (d) concerning appeals. We should not have included this material in the proposal. Appeals are not part of the rulemaking process, which is the subject of this section.

Otherwise, we adopt the section as proposed.

Section 11.40 (New) Can I get more information about a rulemaking?

This section was not in the proposed rule, we added it in response to comments. It states that you can contact the person listed under **FOR FURTHER INFORMATION CONTACT** if you have questions about a proposal, and describes the types of information you can get from that person.

Section 11.41 Who may file comments?

This very brief section states that anyone may file comments on any FAA rulemaking that requests comments.

One commenter suggested we change this section to limit participation in our rulemaking process to parties who have a specific interest in the process, on the grounds that this would reduce work and eliminate frivolous comments. Another commenter stated that ''Section 11.41 should be amended so that comments submitted by United States citizens and businesses are considered before comments submitted by foreign governments, businesses, or citizens not holding an FAA-issued certificate for conducting operations in the United States. * * * A proposed regulation that is based on quantifiable safety data should not be rejected, amended, or altered simply because a competing foreign government believes that the proposal is not compatible with the laws and regulations of their country.''

In response to both comments, FAA notes that the rulemaking process is governed by the Administrative Procedure Act (APA). While we are not required to consider frivolous comments, we cannot establish any sort of standing requirement for who can or cannot comment, nor can we establish criteria for whose comments we consider more important. The APA is intended to provide a broad base of comments on a federal agency's NPRM. It is in the public interest that we consider each comment on its own merit. It is in the best interests of the flying public and of international aviation safety for us to strive for harmonization with the laws and regulations of foreign countries. For this reason, it is appropriate that we also accept comments from foreign citizens and governments.

For these reasons, FAA declines to accept these comments, and adopts the section as proposed.

Section 11.43 What information must I put in my written comments?

This section details the information commenters must include in written comments.

One commenter suggested we add to this section a requirement that commenters be required to state their interest in the particular rulemaking. For the same reasons discussed above under § 11.41, we decline to accept this comment.

Another commenter was concerned about the use of the word ''must'' in the heading. The commenter stated ''this section may be interpreted to impose unreasonable and unnecessary burdens on the public.''

The FAA agrees. We have divided the final section into two major paragraphs, one covering required information and one covering information which you should submit, if it's available to you. We have also reworded the section to clarify the information requirements. We will understand your position better if you are able to give us this supporting material.

Section 11.45 Where and when do I file my comments?

This section explains how to file paper or electronic comments, and the need to file comments by the deadline.

One commenter suggested we add to paragraph (a) ''Any other means designated by the FAA'' to provide FAA flexibility to designate an alternative method for submittal of comments. We appreciate the suggestion. Given the pace of change in electronic technology, it is certainly possible that we will develop a new way of submitting comments. We have added language to this effect in paragraph (a).

The same commenter further suggested we split paragraph (c) into two paragraphs, one to address FAA's rejection of frivolous, abusive, or repetitious comments, the other to address instructions for electronic filing. Further, the commenter suggested FAA should include in the section a provision that we would provide instructions in the proposed rule, as well as on the web site, about how to file comments on the web site.

The FAA doesn't believe it's necessary to provide instructions in the proposal itself about how to file comments on the web site, beyond information about how to find the web site, where there are detailed instructions. This would be redundant and add unnecessary material to part 11. We decline to accept this comment. However, we have added the term ''Docket Management System'' in front of the word ''website'' to clarify that we are talking specifically about the website for that system.

In sum, FAA has added the suggested statement to paragraph (a) of this section, added the clarifying term ''Docket Management System,'' and divided the material into paragraphs on required information and supporting information; otherwise we adopt the section as proposed.

Section 11.47 May I ask for more time to file my comments?

This section explains how you can ask for more time to file comments, and how FAA evaluates your request.

One commenter criticized the structure of the section, noting that paragraphs (a) through (d) were not parallel. The commenter provided alternative language, which FAA agrees is superior. We have used the suggested language in this final rule. This is not a substantive change.

Another commenter suggested we add ''in a timely period'' in two places in the introductory part of this section to clarify that FAA must provide timely notification of an extension of the comment period on a rulemaking action, and of our denial of an extension of the comment period. This commenter also mentioned a specific instance when notification of an extension request was not timely.

The FAA declines to accept this suggestion. We must publish a **Federal Register** notice of any extension of a comment period before the original comment period expires. Otherwise, we must reopen the comment period for additional comments. This requirement ensures that, to the extent possible, we publish comment period extensions as quickly as possible. The FAA has in place procedures to ensure timely notification when we deny someone's request for extended time. We believe these procedures generally work well, and regret that the commenter did not receive timely notification in a specific instance.

In sum, FAA has substituted the language suggested by the first commenter for paragraphs (a) through (d). Otherwise, we adopt the section as proposed.

Section 11.51 May I request that FAA hold a public meeting on a rulemaking action?

This section describes how you can request a public meeting, and what FAA considers in evaluating your request.

One commenter suggested alternative wording for this section. The FAA agrees the suggestion is superior to FAA's proposal, and has substituted the commenter's suggestion. This is not a substantive change.

Another commenter suggested we specify we will provide 60 days for people to request meetings, on the basis that this would give them time to review

complex proposals before deciding to request a meeting. We cannot accept this suggestion. In most cases, rulemaking actions are open for comments for 60 days. We must receive requests for meetings early enough to schedule a meeting within that 60-day comment period. In cases where rules are particularly complex or we receive compelling reasons to provide more time, we will provide a longer comment period.

Several commenters on this section raised the issue of ex parte contacts. We have discussed this issue in the General Discussion of Comments part of this preamble.

For these reasons, FAA has adopted the substance of the section as proposed, using the clearer wording provided by the commenter.

Section 11.53 What takes place at a public meeting?

This section describes public meetings held during the rulemaking process.

The FAA received no comments on this section, except one related to the issue of ex parte contacts. We discuss that issue previously, in the General Discussion of Comments part of this preamble. We removed the final sentence as it is misleading in it's mention of the Administrative Procedure Act. Other than this minor administrative change, we adopt the section as proposed.

Section 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?

This section describes how FAA processes petitions for exemption and rulemaking. In proposed § 11.61, we used a table to show how to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation. In response to comments about combining definitions, we have moved these definitions to the newly created section ''Definition of Terms'' near the beginning of the part. We've discussed definitions in the General Discussion of Comments part of this preamble.

We have expanded final § 11.61. It now discusses the scope of petitions for exemption and rulemaking. It clarifies that petitions for rulemaking and petitions for exemption apply only to Title 14 of the Code of Federal Regulations.

Section 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

This section provides an address to which you should send your petition for rulemaking or petition for exemption. As we explained in the proposal, the section no longer discusses where to file petitions for exemption from the medical standards in part 67, since exceptions to these standards are now handled by special issuances under § 67.401. As part of FAA's effort to make our rulemaking materials more accessible to the public by using DOT's Docket Management System (DMS), you should submit all petitions to DMS.

One commenter criticized the tabular format used to present the address information in the proposed rule. We agree, and in the final rule we no longer display the address information in a tabular format because we have made the process simpler by having all petitions sent to the same address. We have also reworded paragraph (b) for clarity.

Another commenter suggested we add ''Any other means designated by the FAA'' to provide FAA flexibility to designate an alternate method for submittal of comments. For reasons discussed in § 11.45, we have added language to this effect.

In response to commenters questions that we did not specify time periods for actions, we have added a provision (§ 11.63(d)) requiring anyone petitioning for an exemption to submit their petition 120 days before they need the exemption to take effect. We have also changed the first word in the title of the section from ''where'' to ''how'' to accommodate this addition. Although we did not retain the wording in the NPRM, this is not a new provision. The same requirement occurred in the previous version of part 11 at § 11.25. Because the time required to process petitions is so variable, we believe it is best not to place a specific timing requirement on the petitioner or on FAA. However, for clarity, we have added the 120-day period for submission of a petition in the final rule. While FAA processes most petitions within a shorter period, particularly complex petitions may require a longer period for FAA review. Additionally, FAA must give safety matters our highest priority, and this may prevent us from providing the relief in the timeframe requested by the petitioner. You can help ensure that FAA can process your petition for exemption in time to serve your needs by sending us your petition as soon as you know you need the exemption.

Section 11.81 (What information must I include in my petition for an exemption?) repeats this caution in the first sentence. Other than the changes mentioned above, we have adopted this section as proposed.

Section 11.71 What information must I include in my petition for rulemaking?

This section lists the information you must include in your petition for rulemaking.

One commenter requested a slight rewording of § 11.71(b)(3) for clarity. The FAA agrees and has replaced the word ''they'' with ''the burdens'' to clarify the sentence.

Another commenter recommended that a new paragraph (b)(5) be added to this section to read ''The FAA will not publish information that has been declared proprietary and/or confidential business information by the submitter.'' We address this issue above under the discussion of final § 11.35.

Other than the editorial change to § 11.71(b)(3) we adopt this section as proposed.

Section 11.73 How does FAA process petitions for rulemaking?

This section discusses how FAA handles petitions for rulemaking, including under what circumstances FAA may dismiss your petition.

In response to several commenters and as discussed previously in our Petitions for Rulemaking and Exemption preamble portion of ''General Substantive Changes from the Proposed Amendment of Part 11,'' we have added a new sentence at the beginning of this section to preserve FAA's practice of notifying petitioners of the disposition of their petitions.

One commenter made suggestions to modify the sentence structure to clarify the section. We have accepted these non-substantive changes and redesignated paragraph (b)(1) through (b)(4) as paragraphs (b) through (e). Additionally, we have added a sentence to paragraph (e) (proposed (b)(4)) to explain that, while we may have to deny a petition, we do keep issues that may warrant future rulemaking in our database for possible further action.

Another commenter requested that paragraph (d) (proposed paragraph (3)) dealing with petitions involving issues already being considered by ARAC be revised by replacing the word ''may'' to ''will'' in the first sentence to reflect that ''* * * any information or requests the FAA receives regarding a subject the FAA has tasked ARAC to study should be passed to ARAC for review and consideration.'' The FAA agrees. The language used in the proposal was

confusing. Currently, if ARAC is studying the subject area of a petitioner's request, we forward the petition to ARAC for consideration.

We have also made minor wording changes in final paragraph (e) for clarity.

Other than these changes, we adopt this section as proposed.

Section 11.75 Does FAA invite public comment on petitions for rulemaking?

This section states that FAA does not invite public comment on petitions for rulemaking.

One commenter stated this section was superfluous and should be removed. We decline to eliminate this statement. As discussed previously in our Petitions for Rulemaking and Exemption portion of ''General Substantive Changes from the Proposed Amendment of Part 11'' section, this was a major change from old part 11 procedures and we need to make sure the public understands this change in our procedures.

Another commenter stated that while FAA ''* * * should not be expending valuable resources in publishing all rulemaking petitions it receives * * * there is value in the continued publication of summaries of some rulemaking petitions.'' Basically, ''* * * in cases where the FAA finds that a petition for rulemaking meets its criteria, it would be in the public interest for the FAA to publish a summary of such rulemaking petition. This would provide an opportunity for the sharing of added perspective on such issues prior to the FAA expending the significant amount of resources that are necessary to develop and issue a notice of proposed rulemaking.''

The FAA disagrees. When we accept a petition for immediate rulemaking, it is because we determine that the issue is an immediate aviation safety concern and we should concentrate agency resources to respond within 6 months with publication of a rulemaking document (an NPRM or ANPRM). The public then has ample opportunity to assist us by commenting on the proposal and sharing its perspectives, so that the final rule best serves all concerned. Publishing a summary for these petitions would inhibit FAA's ability to develop a rule change to address this safety concern in a timely manner.

Congress passed the Federal Aviation Reauthorization Act of 1996 (49 U.S.C. 40101) which provides that—

* * * The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the **Federal Register** of notice of the proposed rulemaking.

Since passage of the Act, FAA has not published petitions for rulemaking for public comment, as we must make the determination whether to reject or accept the petition. Our present procedure of responding to petitions within 6 months with a denial or a regulatory document is timely and responsive. Also, our increasing use of the electronic docket will enhance public access to and participation in our rulemaking program. See our previous discussion in the preamble in ''Making the Process Open—the Docket Management System.''

Section 11.77 Is there any additional information I must include in my petition for designating airspace?

Proposed § 11.77 lists additional information you must include in a petition to establish, amend, or repeal an airspace designation. There were no comments on this section, and we adopt it as proposed.

Section 11.81 What information must I include in my petition for an exemption?

This section lists information you must include in your petition for an exemption.

Because of questions from commenters, for clarity, we have added a caution in the first sentence of this section that petitioners should submit petitions to FAA as soon as they see the need for relief. We have also added the 120-day period for submission of a petition that was found in the previous version of part 11 back into the final rule in § 11.63(d). The FAA will, however, continue to process petitions as expeditiously as possible.

One commenter suggested that paragraph (a) be re-written to differentiate between the petitioner, the petitioner's representative, and any other interested party. We do not believe we need to do this in regulatory language. We already differentiate between the petitioner and the petitioner's representatives in processing the petition. If we are unsure of the representative's legal right to petition on behalf of a particular entity, we check before processing the petition. The web site for the electronic docket has separate fields for the petitioner information and the petitioner's representative information. As with the paper-based docket, if we are unsure of a party's right to petition on behalf of a particular entity, we will check further before processing the petition.

The same commenter also suggested rewriting paragraph (d) to include the benefit of the exemption to the petitioner. When analyzing a petition for exemption, FAA must determine that granting the request for relief from FAA's regulations is in the general public interest and that the request does not compromise safety. The petitioner may show how its own interests are consistent with the public interest, but to require the petitioner to do so would suggest that the petitioner's interest is equivalent to the public interest. For these reasons, we decline to accept this suggestion.

Another commenter requested that we add a statement saying FAA will base its decision to grant or deny a petition for exemption on the adequacy of the information submitted by the petitioner. We decline to accept this addition. The FAA currently considers the nature and adequacy of information supplied by the petitioner, along with many other factors, in deciding to grant or deny a petition for exemption. We also take into account information from our regional and field offices concerning the circumstances of the petitioner and the overall affect of granting the petitioner's request. Furthermore, we also take into account comments received from other interested parties and overall agency policies and goals.

One commenter suggested we reverse the order of paragraphs (f) and (g). The FAA has accepted this suggestion and made the non-substantive changes.

We have also reworded paragraph (h) to be consistent with changes in final § 11.85. Otherwise, we adopt the section as proposed.

Section 11.83 How can I operate under an exemption outside the United States?

This section explains how you can operate under an exemption outside the United States. We did not receive any comments on this section, but we have slightly modified it.

First, we changed the title of the section to take into account that there are exemptions currently in effect that apply to operations outside the U.S. When we issued these exemptions, we did not determine whether they are consistent with the Standards of the International Civil Aviation Organization (ICAO). In recent discussions with ICAO we have agreed that from now on we will file a difference when we issue such an

exemption. Otherwise, we will limit the exemption to use within the U.S. We intend to apply this approach to already existing exemptions as we renew them. We also intend to review current permanent exemptions and file differences, where necessary.

Resources do not permit us to take the time to determine whether every grant of exemption could result in a deviation from ICAO Standards. For this reason, we have modified proposed § 11.83 to provide that a petitioner who wants to use an exemption outside the U.S. must give us the reason for this use. If petitioners do not tell us that they want to use the exemption outside the U.S., or the reason given does not establish a need, we will limit your exemption to use within the U.S.

Before we extend an exemption to operations outside the U.S., we will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow the petitioner to do so, we will file a difference with ICAO. We note in the section that a foreign country may not allow petitioners to operate in that country without meeting the ICAO standard.

Section 11.85 Does FAA invite public comment on petitions for exemption?

This section discusses how FAA publicizes petitions.

One commenter suggested that we add a new paragraph requiring commenters to state their interest in a petition for exemption. We address this issue above under the discussion of final § 11.81, and we adopt the section as proposed.

Section 11.87 Are there circumstances under which FAA may decide not to publish a summary of my petition for exemption?

This section explains what information you must provide to FAA to convince us not to delay your petition by publishing it. One commenter suggested that we eliminate § 11.87(a). The commenter believes that whether a petition sets a precedent or not should have no bearing on the decision to publish a summary of a petition for exemption. We decline to accept this change. The FAA usually does not publish petitions if we have already published another petition with similar facts and circumstances and received no comments or no adverse comments. It would be an inefficient use of agency resources to publish similar requests for comments. Furthermore, the delay caused by publication could be detrimental to the petitioner. The same petitioner also suggested that we add a new paragraph stating that FAA will not publish information declared proprietary by the petition in the **Federal Register** summary. We do not currently publish proprietary information in the summary and will continue this policy in the future.

Section 11.89 How much time do I have to submit comments to FAA on a petition for exemption?

This section lists the amount of time FAA usually allows for comments on a petition for exemption.

One commenter suggested that we allow a minimum of 30 days to comment on a petition for exemption. The commenter stated that a 20-calendar day comment period leaves the public with only 15 business-days to review the petition and prepare a comment. The commenter believes that a 30-calendar day comment period would allow the public to conduct a more thorough review of the petition and prepare more substantive comments.

The FAA receives over 500 petitions for exemption each year. Approximately 95 percent receive no comments; of the remaining 5 percent less than half receive more than one comment. The FAA makes every reasonable effort to include comments received after the close of the comment period. We will consider requests to extend the comment period on a case-by-case basis. A standard 30-day comment period would unreasonably delay our processing of a petitioner's request. Therefore, we decline to accept this change and we adopt the section as proposed.

Section 11.91 How does FAA inform me of its decision on my petition for exemption?

This section explains how FAA informs a petitioner of our decision. Proposed § 11.91 listed what information FAA publishes after making a decision about a petition for exemption. In response to several comments, and as discussed previously in the ''General Substantive Changes from the Proposed Amendment to Part 11'' section, we have added a new paragraph (a) to clarify that we do notify petitioners of our decision on their petitions. We have renumbered the rest of the section accordingly. Also, we caught errors in the language in proposed § 11.91(c) and (d) (now § 11.91(b)(3) and (4)) that did not pertain to petitions for exemption. We have made minor wording changes in these paragraphs to eliminate the inconsistencies.

One commenter suggested changing ''your petition'' in proposed § 11.91(b) to ''Name of the entity for which the petition was submitted.'' The FAA has declined to accept this change. The suggested wording is not in line with the principles of plain language. For a more detailed discussion of plain language, see the plain language section in the ''General Substantive Changes to the Proposed Amendment to Part 11''. The FAA has always differentiated between the petitioning entity and its representative.

The same commenter also suggested rewriting proposed § 11.91(e) (now § 11.91(b)(5)) to include an explanation of FAA's decision. The purpose of the **Federal Register** summary is to inform the general public of petitions for exemption on which FAA has made a decision. Any party interested in the rationale behind the agency's decision may get a copy of the exemption from the DMS web site or request a copy from the contact listed in our **Federal Register** Summary Notice. It is not practical to publish an explanation of each disposition.

Other than the changes described above, we adopt this section as proposed.

Section 11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

This section explains how you may request FAA to reconsider petitions we have denied.

One commenter suggests that we replace the word ''Can'' with ''May'' in this section title to be consistent with similar questions and answers throughout this rule. We agree with this suggestion and have changed this section accordingly.

Another commenter asserts that the language in § 11.101(a) and (b) is more onerous and rigorous than the language in old § 11.55(d). We disagree, the language in this section was chosen to add clarity and is consistent with the intent of old § 11.55.

Other than the non-substantive changes mentioned above, we adopt this section as proposed.

Section 11.201 Office of Management and Budget (OMB) control numbers assigned pursuant to the Paperwork Reduction Act

This subpart consolidates and displays a chart of the OMB assigned control numbers for the information collection requirements of the FAA as required in the Paperwork Reduction Act of 1995.

One commenter stated that use of the abbreviation ''OMB'' in the title of the section was unclear. We agree, in this final version we have written out the name of the office. Other than this change in the title of the section we adopt this section as proposed.

Paperwork Reduction Act

This part does not include any information collection requirements for which we need approval from the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). This part simply addresses general rulemaking procedures. Any information collection requirements created by specific parts of FAA's regulations are addressed at that particular part.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only after making a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in State, local, or private sector expenditure of $100 million or more of non-federal funds in any one year (adjusted for inflation.).

However, if the agency expects the regulations to have a minimal impact, the agency does not have to perform these analyses. The Department of Transportation Order's DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the agency expects an impact so minimal that the proposed or final rule does not warrant a full evaluation, the agency should include a statement to that effect and the basis for it in the regulation. Since this final rule revises and clarifies FAA rulemaking procedures and since no adverse comments were received regarding FAA's initial finding of minimal impact, FAA continues to expect the rule to have a minimal impact with some positive net benefits.

Regulatory Flexibility Determination

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

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act allows the head of the agency to so certify. In that case, the agency does not have to do a regulatory flexibility analysis. The certification must be clearly reasoned and include a statement providing the factual basis for the determination.

This action revises and clarifies FAA rulemaking and therefore FAA expects this rule to impose no cost on small entities. Consequently, FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires the agency to consider international standards and, where appropriate, use them as the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade. These barriers include both those affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

The FAA has assessed this final rule's potential effect on international trade to be minimal. Therefore FAA determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule likely to result in State, local or tribal governments or private sector expenditure of $100 million or more of non-federal funds in any one year (adjusted for inflation.).

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this regulation.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D,

appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The FAA has assessed the energy impact of this rule under the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

The Amendment

In consideration of the above, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

1. Revise part 11 to read as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

Subpart A—Rulemaking Procedures

Sec.

11.1 To what does this part apply?

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11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Subpart B—Paperwork Reduction Act Control Numbers

11.201 Office of Management and Budget (OMB) control numbers assigned pursuant to the Paperwork Reduction Act.

Appendix 1 to Part 11—Oral Communications With the Public During Rulemaking

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

Subpart A—Rulemaking Procedures

§ 11.1 To what does this part apply?

This part applies to the issuance, amendment, and repeal of any regulation for which FAA (''we'') follows public rulemaking procedures under the Administrative Procedure Act (''APA'') (5 U.S.C. 553).

Definition of Terms

§ 11.3 What is an advance notice of proposed rulemaking?

An advance notice of proposed rulemaking (ANPRM) tells the public that FAA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 11.5 What is a notice of proposed rulemaking?

A notice of proposed rulemaking (NPRM) proposes FAA's specific regulatory changes for public comment and contains supporting information. It includes proposed regulatory text.

§ 11.7 What is a supplemental notice of proposed rulemaking?

On occasion, FAA may decide that it needs more information on an issue, or that we should take a different approach than we proposed. Also, we may want to follow a commenter's suggestion that goes beyond the scope of the original proposed rule. In these cases, FAA may issue a supplemental notice of proposed rulemaking (SNPRM) to give the public an opportunity to comment further or to give us more information.

§ 11.9 What is a final rule?

A final rule sets out new or revised requirements and their effective date. It also may remove requirements. When preceded by an NPRM, a final rule will also identify significant substantive issues raised by commenters in response to the NPRM and will give the agency's response.

§ 11.11 What is a final rule with request for comments?

A final rule with request for comment is a rule that the FAA issues in final (with an effective date) that invites public comment on the rule. We usually do this when we have not first issued an ANPRM or NPRM, because we have found that doing so would be impracticable, unnecessary, or contrary to the public interest. We give our reasons for our determination in the preamble. The comment period often ends after the effective date of the rule. A final rule not preceded by an ANPRM or NPRM is commonly called an ''immediately adopted final rule.'' We invite comments on these rules only if we think that we will receive useful information. For example, we would not invite comments when we are just making an editorial clarification or correction.

§ 11.13 What is a direct final rule?

A direct final rule is a type of final rule with request for comments. Our reason for issuing a direct final rule without an NPRM is that we would not expect to receive any adverse comments, and so an NPRM is unnecessary. However, to be certain that we are correct, we set the comment period to end before the effective date. If we receive an adverse comment or notice of intent to file an adverse comment, we then withdraw the final rule before it becomes effective and may issue an NPRM.

§ 11.15 What is a petition for exemption?

A petition for exemption is a request to FAA by an individual or entity asking for relief from the requirements of a current regulation.

§ 11.17 What is a petition for rulemaking?

A petition for rulemaking is a request to FAA by an individual or entity asking the FAA to adopt, amend, or repeal a regulation.

§ 11.19 What is a special condition?

A special condition is a regulation that applies to a particular aircraft design. The FAA issues special conditions when we find that the airworthiness regulations for an aircraft, aircraft engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature.

General

§ 11.21 What are the most common kinds of rulemaking actions for which FAA follows the Administrative Procedure Act?

FAA follows the Administrative Procedure Act (APA) procedures for these common types of rules:

(a) Rules found in the Code of Federal Regulations;

(b) Airworthiness directives issued under part 39 of this chapter; and

(c) Airspace Designations issued under various parts of this chapter.

§ 11.23 Does FAA follow the same procedures in issuing all types of rules?

Yes, in general, FAA follows the same procedures for all rule types. There are some differences as to which FAA official has authority to issue each type, and where you send petitions for FAA to adopt, amend, or repeal each type. Assume that the procedures in this subpart apply to all rules, except where we specify otherwise.

§ 11.25 How does FAA issue rules?

(a) The FAA uses APA rulemaking procedures to adopt, amend, or repeal regulations. To propose or adopt a new regulation, or to change a current regulation, FAA will issue one or more of the following documents. We publish these rulemaking documents in the **Federal Register** unless we name and personally serve a copy of a rule on every person subject to it. We also make all documents available to the public by posting them in the Department of Transportation's electronic docket at http://dms.dot.gov.

(1) An advance notice of proposed rulemaking (ANPRM).

(2) A notice of proposed rulemaking (NPRM).

(3) A supplemental notice of proposed rulemaking (SNPRM).

(4) A final rule.

(5) A final rule with request for comments.

(6) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

(1) The topic involved in the rulemaking document.

(2) FAA's legal authority for issuing the rulemaking document.

(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations at a public meeting).

(4) Whom to call if you have questions about the rulemaking document.

(5) The date, time, and place of any public meetings FAA will hold to discuss the rulemaking document.

(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

§ 11.27 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

Yes, the FAA obtains advice and recommendations from rulemaking advisory committees. One of these committees is the Aviation Rulemaking Advisory Committee (ARAC), which is a formal standing committee comprised of representatives of aviation associations and industry, consumer groups, and interested individuals. In conducting its activities, ARAC complies with the Federal Advisory Committee Act and the direction of FAA. We task ARAC with providing us with recommended rulemaking actions dealing with specific areas and problems. If we accept an ARAC recommendation to change an FAA rule, we ordinarily publish an NPRM using the procedures in this part. The FAA may establish other rulemaking advisory committees as needed to focus on specific issues for a limited period of time.

§ 11.29 May FAA change its regulations without first issuing an ANPRM or NPRM?

The FAA normally adds or changes a regulation by issuing a final rule after an NPRM. However, FAA may adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may issue a final rule without first requesting public comment if, for good cause, we find that an NPRM is impracticable, unnecessary, or contrary to the public interest. We place that finding and a brief statement of the reasons for it in the final rule. For example, we may issue a final rule in response to a safety emergency.

(b) If an NPRM would be unnecessary because we do not expect to receive adverse comment, we may issue a direct final rule.

§ 11.31 How does FAA process direct final rules?

(a) A direct final rule will take effect on a specified date unless FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period—generally 60 days after the direct final rule is published in the **Federal Register**. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. We consider the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

(b) If FAA has not received an adverse comment or notice of intent to file an adverse comment, we will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

(c) If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the **Federal Register** before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

§ 11.33 How can I track FAA's rulemaking activities?

The best ways to track FAA's rulemaking activities are with the docket number or the regulation identifier number.

(a) *Docket number.* We assign a docket number to each rulemaking proceeding. Each rulemaking document FAA issues in a particular rulemaking proceeding, as well as public comments on the proceeding, will display the same docket number. This number allows you to search DOT's Docket Management System (DMS) for information on most rulemaking proceedings. You can view and copy docket materials during regular business hours at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001. Or you can view and download docketed materials through the Internet at http://dms.dot.gov. If you can't find the material in the electronic docket, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in the document you are interested in.

(b) *Regulation identifier number.* DOT publishes a semiannual agenda of all current and projected DOT rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations, published in the **Federal Register** in April and October of each year. The semiannual agenda tells the public about DOT's—including FAA's—regulatory activities. DOT assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the **Federal Register** and makes it easy for you to track those rulemaking proceedings in both the **Federal Register** and the semiannual regulatory agenda.

§ 11.35 Does FAA include sensitive security information and proprietary information in the Docket Management System (DMS)?

(a) *Sensitive security information.* You should not submit sensitive security information to the rulemaking docket, unless you are invited to do so in our request for comments. If we ask for this information, we will tell you in the specific document how to submit this information, and we will provide a separate non-public docket for it. For all proposed rule changes involving civil aviation security, we review comments as we receive them, before they are placed in the docket. If we find that a comment contains sensitive security information, we remove that information before placing the comment in the general docket.

(b) *Proprietary information.* When we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

§ 11.37 Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?

The FAA includes most documents concerning Airworthiness Directives, airspace designations, or petitions handled in a region in the electronic docket. If the information isn't in the docket, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in the **Federal Register** document about the action.

§ 11.38 What public comment procedures does the FAA follow for Special Conditions?

Even though the Administrative Procedure Act does not require notice and comment for rules of particular applicability, FAA does publish proposed special conditions for comment. In the following circumstances we may not invite comment before we issue a special condition. If we don't, we will invite comment when we publish the final special condition.

(a) The FAA considers prior notice to be impracticable if issuing a design approval would significantly delay delivery of the affected aircraft. We consider such a delay to be contrary to the public interest.

(b) The FAA considers prior notice to be unnecessary if we have provided previous opportunities to comment on substantially identical proposed special conditions, and we are satisfied that new comments are unlikely.

§ 11.39 How may I participate in FAA's rulemaking process?

You may participate in FAA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an ANPRM, NPRM, SNPRM, a final rule with request for comments, or a direct final rule. Follow the directions for commenting found in each rulemaking document.

(b) Ask that we hold a public meeting on any rulemaking, and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to adopt, amend, or repeal a regulation.

§ 11.40 Can I get more information about a rulemaking?

You can contact the person listed under **FOR FURTHER INFORMATION CONTACT** in the preamble of a rule. That person can explain the meaning and intent of a proposed rule, the technical aspects of a document, the terminology in a document, and can tell you our published schedule for the rulemaking process. We cannot give you information that is not already available to other members of the public. Department of Transportation policy on oral communications with the public during rulemaking appears in appendix 1 of this part.

Written Comments

§ 11.41 Who may file comments?

Anyone may file written comments about proposals and final rules that request public comments.

§ 11.43 What information must I put in my written comments?

(a) Your written comments must be in English and must contain the following:

(1) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(2) Your name and mailing address, and, if you wish, other contact information, such as a fax number, telephone number, or e-mail address.

(3) Your information, views, or arguments, following the instructions for participation in the rulemaking document on which you are commenting.

(b) You should also include all material relevant to any statement of fact or argument in your comments, to the extent that the material is available to you and reasonable for you to submit. Include a copy of the title page of the document. Whether or not you submit a copy of the material to which you refer, you should indicate specific places in the material that support your position.

§ 11.45 Where and when do I file my comments?

(a) Send your comments to the location specified in the rulemaking document on which you are commenting. If you are asked to send your comments to the Docket Management System, you may send them in either of the following ways:

(1) By mail to: U.S. Department of Transportation, Docket Management

System, 400 7th Street, SW., Plaza Level 401, Washington, DC 20591.

(2) Through the Internet to http://dms.dot.gov/.

(3) In any other manner designated by FAA.

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late-filed comments to the extent possible only if they do not significantly delay the rulemaking process.

(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the Docket Management System web site.

§ 11.47 May I ask for more time to file my comments?

Yes, if FAA grants your request for more time to file comments, we grant all persons the same amount of time. We will notify the public of the extension by a document in the **Federal Register**. If FAA denies your request, we will notify you of the denial. To ask for more time, you must file a written or electronic request for extension at least 10 days before the end of the comment period. Your letter or message must—

(a) Show the docket number of the rule at the top of the first page;

(b) State, at the beginning, that you are requesting an extension of the comment period;

(c) Show that you have good cause for the extension and that an extension is in the public interest;

(d) Be sent to the address specified for comments in the rulemaking document on which you are commenting.

Public Meetings and Other Proceedings

§ 11.51 May I request that FAA hold a public meeting on a rulemaking action?

Yes, you may request that we hold a public meeting. FAA holds a public meeting when we need more than written comments to make a fully informed decision. Submit your written request to the address specified in the rulemaking document on which you are commenting. Specify at the top of your letter or message that you are requesting that the agency hold a public meeting. Submit your request no later than 30 days after our rulemaking notice. If we find good cause for a meeting, we will notify you and publish a notice of the meeting in the **Federal Register**.

§ 11.53 What takes place at a public meeting?

A public meeting is a non-adversarial, fact-finding proceeding conducted by an FAA representative. Public meetings are announced in the **Federal Register**. We invite interested persons to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting.

Petitions for Rulemaking and for Exemption

§ 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?

(a) Using a petition for rulemaking, you may ask FAA to add a new regulation to title 14 of the Code of Federal Regulations (14 CFR) or ask FAA to amend or repeal a current regulation in 14 CFR.

(b) Using a petition for exemption, you may ask FAA to grant you relief from current regulations in 14 CFR.

§ 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) For paper submissions, send the original signed copy of your petition for rulemaking or exemption to this address: U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591–0001.

(b) For electronic submissions, submit your petition to FAA through the Internet using the Docket Management System web site at this Internet address: http://dms.dot.gov/.

(c) In the future, FAA may designate other means by which you can submit petitions.

(d) Submit your petition for exemption 120 days before you need the exemption to take effect.

§ 11.71 What information must I include in my petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address.

(2) An explanation of your proposed action and its purpose.

(3) The language you propose for a new or amended rule, or the language you would remove from a current rule.

(4) An explanation of why your proposed action would be in the public interest.

(5) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(6) Any specific facts or circumstances that support or demonstrate the need for the action you propose.

(b) In the process of considering your petition, we may ask that you provide information or data available to you about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(3) The recordkeeping and reporting burdens of your proposed action and whom the burdens would affect.

(4) The effect of your proposed action on the quality of the natural and social environments.

§ 11.73 How does FAA process petitions for rulemaking?

After we have determined the disposition of your petition, we will contact you in writing about our decision. The FAA may respond to your petition for rulemaking in one of the following ways:

(a) If we determine that your petition justifies our taking the action you suggest, we may issue an NPRM or ANPRM. We will do so no later than 6 months after the date we receive your petition. In making our decision, we consider:

(1) The immediacy of the safety or security concerns you raise;

(2) The priority of other issues the FAA must deal with; and

(3) The resources we have available to address these issues.

(b) If we have issued an ANPRM or NPRM on the subject matter of your petition, we will consider your arguments for a rule change as a comment in connection with the rulemaking proceeding. We will not treat your petition as a separate action.

(c) If we have begun a rulemaking project in the subject area of your petition, we will consider your comments and arguments for a rule change as part of that project. We will not treat your petition as a separate action.

(d) If we have tasked ARAC to study the general subject area of your petition, we will ask ARAC to review and evaluate your proposed action. We will not treat your petition as a separate action.

(e) If we determine that the issues you identify in your petition may have merit, but do not address an immediate safety concern or cannot be addressed because of other priorities and resource constraints, we may dismiss your petition. Your comments and arguments

for a rule change will be placed in a database, which we will examine when we consider future rulemaking.

§ 11.75 Does FAA invite public comment on petitions for rulemaking?

Generally, FAA does not invite public comment on petitions for rulemaking.

§ 11.77 Is there any additional information I must include in my petition for designating airspace?

In petitions asking FAA to establish, amend, or repeal a designation of airspace, including special use airspace, you must include all the information specified by § 11.71 and also:

(a) The location and a description of the airspace you want assigned or designated;

(b) A complete description of the activity or use to be made of that airspace, including a detailed description of the type, volume, duration, time, and place of the operations to be conducted in the area;

(c) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if we grant the designation; and

(d) The name and location of the agency, office, facility, or person who would have authority to permit the use of the airspace when it was not in use for the purpose to which you want it assigned.

§ 11.81 What information must I include in my petition for an exemption?

You must include the following information in your petition for an exemption and submit it to FAA as soon as you know you need an exemption.

(a) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address;

(b) The specific section or sections of 14 CFR from which you seek an exemption;

(c) The extent of relief you seek, and the reason you seek the relief;

(d) The reasons why granting your request would be in the public interest; that is, how it would benefit the public as a whole;

(e) The reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to that provided by the rule from which you seek the exemption;

(f) A summary we can publish in the **Federal Register**, stating:

(1) The rule from which you seek the exemption; and

(2) A brief description of the nature of the exemption you seek;

(g) Any additional information, views or arguments available to support your request; and

(h) If you want to exercise the privileges of your exemption outside the United States, the reason why you need to do so.

§ 11.83 How can I operate under an exemption outside the United States?

If you want to be able to operate under your exemption outside the United States, you must request this when you petition for relief and give us the reason for this use. If you do not provide your reason or we determine that it does not justify this relief, we will limit your exemption to use within the United States. Before we extend your exemption for use outside the United States, we will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow you to do so, we will file a difference with ICAO. However, a foreign country still may not allow you to operate in that country without meeting the ICAO standard.

§ 11.85 Does FAA invite public comment on petitions for exemption?

Yes, FAA publishes information about petitions for exemption in the **Federal Register**. The information includes—

(a) The docket number of the petition;

(b) The citation to the rule or rules from which the petitioner requested relief;

(c) The name of the petitioner;

(d) The petitioner's summary of the action requested and the reasons for requesting it; and

(e) A request for comments to assist FAA in evaluating the petition.

§ 11.87 Are there circumstances in which FAA may decide not to publish a summary of my petition for exemption?

The FAA may not publish a summary of your petition for exemption and request comments if you present or we find good cause why we should not delay action on your petition. The factors we consider in deciding not to request comment include:

(a) Whether granting your petition would set a precedent.

(b) Whether the relief requested is identical to exemptions granted previously.

(c) Whether our delaying action on your petition would affect you adversely.

(d) Whether you filed your petition in a timely manner.

§ 11.89 How much time do I have to submit comments to FAA on a petition for exemption?

The FAA states the specific time allowed for comments in the **Federal Register** notice about the petition. We usually allow 20 days to comment on a petition for exemption.

§ 11.91 How does FAA inform me of its decision on my petition for exemption?

(a) The FAA will notify you in writing about its decision on your petition.

(b) The FAA publishes a summary in the **Federal Register** that includes—

(1) The docket number of your petition;

(2) Your name;

(3) The citation to the rules from which you requested relief;

(4) A brief description of the general nature of the relief requested;

(5) Whether FAA granted or denied the request;

(6) The date of FAA's decision; and

(7) An exemption number.

§ 11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Yes, you may petition FAA to reconsider your petition denial. You must submit your request to the address to which you sent your original petition, and FAA must receive it within 60 days after we issued the denial. For us to accept your petition, show the following:

(a) That you have a significant additional fact and why you did not present it in your original petition;

(b) That we made an important factual error in our denial of your original petition; or

(c) That we did not correctly interpret a law, regulation, or precedent.

Subpart B—Paperwork Reduction Act Control Numbers

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

(a) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires FAA to get approval from OMB for our information collection activities, and to list a record of those approvals in the **Federal Register**. This subpart lists the control numbers OMB assigned to FAA's information collection activities.

(b) The table listing OMB control numbers assigned to FAA's information collection activities follows:

14 CFR part or section identified and described	Current OMB control number
Part 14	2120–0539
Part 17	2120–0632

14 CFR part or section identified and described	Current OMB control number
Part 21	2120–0018, 2120–0552
Part 34	2120–0508
Part 39	2120–0056
Part 43	2120–0020
Part 45	2120–0508
Part 47	2120–0024, 2120–0042
Part 49	2120–0043
Part 61	2120–0021, 2120–0034, 2120–0543, 2120–0571
Part 63	2120–0007
Part 65	2120–0022, 2120–0535, 2120–0571, 2120–0648
Part 67	2120–0034, 2120–0543
Part 77	2120–0001
Part 91	2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651
Part 93	2120–0524, 2120–0606, 2120–0639
Part 101	2120–0027
Part 105	2120–0027, 2120–0641
Part 107	2120–0075, 2120–0554, 2120–0628
Part 108	2120–0098, 2120–0554, 2120–0577, 2120–0628, 2120–0642
Part 109	2120–0505
Part 119	2120–0593
Part 121	2120–0008, 2120–0028, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0631, 2120–0651, 2120–0653
Part 125	2120–0028, 2120–0085, 2120–0616, 2120–0651
Part 129	2120–0028, 2120–0536, 2120–0616, 2120–0638
Part 133	2120–0044
Part 135	2120–0003, 2120–0028, 2120–0039, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0620, 2120–0631, 2120–0653
Part 137	2120–0049
Part 139	2120–0045, 2120–0063
Part 141	2120–0009
Part 142	2120–0570
Part 145	2120–0003, 2120–0010, 2120–0571
Part 147	2120–0040
Part 150	2120–0517
Part 157	2120–0036
Part 158	2120–0557
Part 161	2120–0563
Part 171	2120–0014
Part 183	2120–0033, 2120–0604
Part 193	2120–0646
Part 198	2120–0514
Part 400	2120–0643, 2120–0644, 0649
Part 401	2120–0608
Part 440	2120–0601
SFAR 36	2120–0507
SFAR 64	2120–0573
SFAR 71	2120–0620

Appendix 1 to Part 11—Oral Communications With the Public During Rulemaking

1. What is an ex parte contact?

''Ex parte'' is a Latin term that means ''one sided,'' and indicates that not all parties to an issue were present when it was discussed. An ex parte contact involving rulemaking is any communication between FAA and someone outside the government regarding a specific rulemaking proceeding, before that proceeding closes. A rulemaking proceeding does not close until we publish the final rule or withdraw the NPRM. Because an ex parte contact excludes other interested persons, including the rest of the public, from the communication, it may give an unfair advantage to one party, or appear to do so.

2. Are written comments to the docket ex parte contacts?

Written comments submitted to the docket are not ex parte contacts because they are available for inspection by all members of the public.

3. What is DOT policy on ex parte contacts?

It is DOT policy to provide for open development of rules and to encourage full public participation in rulemaking actions. In addition to providing opportunity to respond in writing to an NPRM and to appear and be heard at a hearing, DOT policy encourages agencies to contact the public directly when we need factual information to resolve questions of substance. It also encourages DOT agencies to be receptive to appropriate contacts from persons affected by or interested in a proposed action. But under some circumstances an ex parte contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety can affect public confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of ex parte contacts permitted and the procedures we follow depend on when the contact occurs in the rulemaking process.

4. What kinds of ex parte contacts does DOT policy permit before we issue an ANPRM, NPRM, Supplemental NPRM, or immediately adopted final rule?

The DOT policy authorizes ex parte contacts that we need to obtain technical and economic information. We need this information to decide whether to issue a regulation and what it should say. Each contact that influences our development of the regulation is noted in the preamble. For multiple contacts that are similar, we may provide only a general discussion. For contacts not discussed in the preamble, we place a report discussing each contact or group of related contacts in the rulemaking docket when it is opened.

5. Does DOT policy permit ex parte contacts during the comment period?

No, during the comment period, the public docket is available for written comments from any member of the public. These comments can be examined and responded to by any interested person. Because this public forum is available, DOT policy discourages ex parte contacts during the comment period. They are not necessary to collect the information the agency needs to make its decision.

6. What if the FAA believes it needs to meet with members of the public to discuss the proposal?

If the FAA determines that it would be helpful to invite members of the public to make oral presentations to it regarding the proposal, we will announce a public meeting in the **Federal Register**.

7. Are any oral contacts concerning the proposal permitted during the comment period?

If you contact the agency with questions regarding the proposal during the comment period, we can only provide you with information that has already been made available to the general public. If you contact the agency to discuss the proposal, you will be told that the proper avenue of communication during the comment period is a written communication to the docket.

8. If a substantive ex parte contact does occur during the comment period, what does FAA do?

While FAA tries to ensure that FAA personnel and the public are aware of DOT policy, substantive ex parte contacts do occasionally occur, for example, at meetings not intended for that purpose. In such a case, we place a summary of the contact and a copy of any materials provided at the meeting in the rulemaking docket. We encourage participants in such a meeting to file written comments in the docket.

9. Does DOT policy permit ex parte contacts the comment period has closed?

DOT policy strongly discourages ex parte contacts initiated by commenters to discuss their position on the proposal once the comment period has closed. Such a contact at this time would be improper, since other interested persons would not have an opportunity to respond. If we need further information regarding a comment in the docket, we may request this from a commenter. A record of this contact and the information provided is placed in the docket. If we need to make other contacts to update factual information, such as economic data, we will disclose this information in the final rule docket or in the economic studies

accompanying it, which are available in the docket.

10. What if FAA needs to meet with interested persons to discuss the proposal after the comment period has closed?

If FAA determines that it would be helpful to meet with a person or group after the close of the comment period to discuss a course of action to be taken, we will announce the meeting in the **Federal Register**. We will also consider reopening the comment period. If an inappropriate ex parte contact does occur after the comment period closes, a summary of the contact and a copy of any material distributed during meeting will be placed in the docket if it could be seen as influencing the rulemaking process.

11. Under what circumstances will FAA reopen the comment period?

If we receive an ex parte communication after the comment period has closed that could substantially influence the rulemaking, we may reopen the comment period. DOT policy requires the agency to carefully consider whether the substance of the contact will give the commenter an unfair advantage, since the rest of the public may not see the record of the contact in the docket. When the substance of a proposed rule is significantly changed as a result of such an oral communication, DOT policy and practice requires that the comment period be reopened by issuing a supplemental NPRM in which the reasons for the change are discussed.

12. What if I have important information for FAA and the comment period is closed?

You may always provide FAA with written information after the close of the comment period and it will be considered if time permits. Because contacts after the close of the comment may not be seen by other interested persons, if they substantially and specifically influence the FAA's decision, we may need to reopen the comment period.

Issued in Washington, DC, on August 8, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–20481 Filed 8–18–00; 8:45 am]

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Federal Register

Monday,
August 21, 2000

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 4, 5, et al.
Federal Acquisition Regulation; Electronic Commerce in Federal Procurement; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36

[FAR Case 1997–304]

RIN 9000–AI10

Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to designate FedBizOpps as the single point of universal electronic public access to Governmentwide procurement opportunities. Agencies will have until October 1, 2001, to complete their transition to, or integration with, FedBizOpps. This rule implements section 850 of the National Defense Authorization Act for Fiscal Year 1998. The proposed rule also changes the public notification requirements to allow greater electronic access to information on Government acquisitions, including notices of upcoming acquisition opportunities, notices of subcontracting opportunities, and notices of contract awards.

DATES: Interested parties should submit comments in writing on or before October 20, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration FAR Secretariat (MVRS) 1800 F Street, NW, Room 4035 ATTN: Laurie Duarte Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.1997–304@gsa.gov*

Please submit comments only and cite FAR case 1997–304 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 1997–304.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 63 FR 58590, October 30, 1998, amending FAR Subpart 4.5 and making associated changes to FAR Parts 2, 5, 13, 14, and 32 to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85. Section 850 amends Titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within agencies to be conducted on the FACNET computer architecture. The interim rule—

- Promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems; and
- Requires Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Public comments were received from 28 respondents. All comments were considered in drafting this proposed rule. Subsequent to publication of the interim rule, the Office of Federal Procurement Policy proposed to designate FedBizOpps as the single Governmentwide point of entry for accessing information on procurement actions. This proposed rule changes the FAR to implement that recommendation.

FedBizOpps (in the process of being expanded for Governmentwide usage) is the new name for the Electronic Posting System (EPS) that is accessible via the Internet at *http://www.fedbizopps.gov.* Agencies must make contracting opportunities that meet the criteria in FAR 5.101 accessible via FedBizOpps. Most public notices of procurement actions over $25,000 are now published in the *Commerce Business Daily.* Under the proposed rule, agencies would no longer furnish separate notices to the CBD. Agencies would direct FedBizOpps to forward the information to the CBD, using the current format prescribed for the electronic version of CBD, Commerce Business Daily Network (CBDNet). The proposed rule also—

- Adds place of contract performance and set-aside status to the required notice content;
- Requires agencies to make accessible through FedBizOpps other notices that are currently published in the CBD, such as pre-solicitation notices and award notices supporting subcontracting opportunities;
- Requires agencies to make accessible via FedBizOpps most solicitations and amendments associated with business opportunities listed on the FedBizOpps website;
- Permits contractors to publicize subcontracting opportunities with the intent of supporting achievement of subcontracting goals; and
- Permits agencies to make accessible via FedBizOpps information that allows potential offerors to better understand how they can meet the Government's needs.

Agencies must be posting all applicable actions on the FedBizOpps website by October 1, 2001. This phase-in period supports smooth transition to a Governmentwide posting system.

In proposing to designate FedBizOpps, the Office of Federal Procurement Policy (OFPP), in consultation with the Procurement Executives Council (PEC), considered the electronic methods that have been used in recent years to significantly increase access to Government procurement opportunities. In addition to FedBizOpps, OFPP considered CBDNet and the Federal Acquisition Computer Network (FACNET). OFPP also examined suitable commercial alternatives.

The following were the OFPP objectives:

- Create a central point for electronic access to business opportunities. Through the central point, allow access to notices that must now be published in the CBD, solicitations, and related acquisition information, including information maintained at central points or on agency websites.
- Follow the commercial lead. Leverage the investment made by the private sector, benefit from the market-driven economies and innovation that commercial tools offer, and accommodate different commercial electronic means for acquiring information.
- Facilitate reengineering for sellers and buyers. For sellers, provide ''one stop to business'' and a consistent process for locating business opportunities. The Governmentwide point of entry must be reliable and easy to use. For buyers, support streamlined preparation and issuance of notices and solicitation information without disrupting, eliminating or otherwise requiring the replacement of current agency electronic commerce software.

Based on agencies' experiences to date with each of the above-mentioned alternatives, OFPP believes that

FedBizOpps can most effectively meet the Government's objectives by—

• Creating a central point for electronic access. FedBizOpps hosts a wide variety of business documents, including notices, solicitations, and other related acquisition information;

• Creating an index of all business information at one internet location for searching and downloading;

• Allowing agencies to continue to select the most appropriate posting option for their mission (*i.e.,* posting at FedBizOpps or posting at the agency website), since either achieves the goal of access through a single point of entry;

• Providing access through electronic tools that have widespread commercial acceptance and interface with sellers' electronic tools, and can adapt to new tools as they gain commercial acceptance;

• Allowing potential offerors and service providers to access and download information through a variety of commercial electronic means and business applications, including web-based technology, bulk data feeds, and push technology through electronic mail (e-mail); and

• Enabling sellers to choose the means (either direct or service-provider enhanced) they find most suitable for gaining access to Federal business opportunities.

For sellers—

• Providing ''one stop'' access to business opportunities. After identifying notices of interest, sellers may quickly access related solicitation information through a direct link. When a seller ''clicks'' to the notice, they are also obtaining, through the solicitation page, direct access to all solicitation and related information electronically available at that time on the acquisition;

• Easing the process for locating the information needed to decide whether to pursue a business opportunity by presenting information in consistent web page formats (*i.e.,* the same user interface) up to the point of browsing or downloading the solicitation. This enhances sellers' familiarity and comfort in identifying business opportunities for review;

• Making notices of proposed contract actions available in a standardized format, as required by FAR 5.207. (However, FedBizOpps does not require a standardized format for solicitations, so that agencies may maintain flexibility in formatting solicitations to accommodate their individual processes and needs); and

• Keeping business processes simple and flexible. Surveys indicate that potential offerors generally find that FedBizOpps provides easy, user friendly, and consistent access to business opportunities. Users like FedBizOpps' automatic e-mail notification feature because it provides information about contracting opportunities for specific supplies or services or specified agencies and eliminates the need for repeated searches to gain access to up-to-date information.

For the Government—

• Reengineering Government buyer practices. Surveys indicate that FedBizOpps helps to streamline and eliminate transaction steps. FedBizOpps can accommodate existing posting systems and contract writing systems, allowing seamless integration. Notices and solicitations can be posted on the Internet without any rekeying of information. Agencies without their own posting system or a contract writing system that integrates with FedBizOpps are serviced through an easy web-based interface. According to the survey, this increases agency efficiency;

• Eliminating the need for individual websites. In the past, agencies maintained individual web sites at each operating location. When a buyer or contracting officer wanted to produce a business opportunity, they would enter the notice information into CBDNet through the Internet, and would give their solicitation document to a ''webmaster'' who would post the document to the Internet. Under FedBizOpps, the buyer posts the notice information. It is forwarded to CBDNet, and FedBizOpps posts the solicitation document via the Internet FedBizOpps. This reduces process steps and eliminates the need for a dedicated webmaster for this function; and

FedBizOpps is linked to the Procurement Marketing and Access Network (PRO-Net), an Internet database of small businesses managed by the Small Business Administration. This link increases small business awareness of Government contracting opportunities.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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.*, because the proposed rule establishes Federal Business Opportunities (FedBizOpps.gov) as the single Governmentwide point of electronic entry (''GPE'') for all large and small business entities accessing notices of proposed contract actions, solicitations, and related procurement information. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The proposed rule establishes the Electronic Posting System (EPS), to be renamed the Federal Business Opportunities (FedBizOpps.gov), as the single Governmentwide point of electronic entry (''GPE'') for accessing notices of proposed contract actions, solicitations, and related procurement information. This action implements section 30(c)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 426(c)(4), that requires the designation of a single point of entry to provide convenient and universal public access to procurement opportunities Governmentwide.

The legal basis for the rule is Section 850 of Public Law 105–85, codified at section 30 of the OFPP Act (41 U.S.C. 426).

The proposed rule will apply to all large and small entities that do business or are planning to do business with the Government. FedBizOpps is designed to be sufficiently versatile to allow sellers and service providers to access and download information through different commercial electronic means, including web-based technology, bulk data feeds, and electronic mail. This versatility will enable the more than 47,340 small and 29,200 large businesses to have easy access to Government business opportunities.

The rule imposes no reporting, recordkeeping, or other compliance requirements. Basic skill in operating a personal computer with access to the internet is required to access the GPE website (*http://www.fedbizopps.gov*). The estimated purchase cost of a personal computer, modem, software, telephone lines, and internet access is $1,600. To accommodate small and large businesses that may not wish to access the GPE directly, FedBizOpps will make notices available for paper publication in the CBD. In addition, FedBizOpps will make available—in a daily bulk feed—business opportunity information to value added networks and other service providers to publish or otherwise provide information in either electronic or paper form.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

Prior to the development of this proposed rule, the Office of Federal Procurement Policy (OFPP), in consultation with the Procurement Executives Council (PEC), considered the suitability of various alternatives to satisfy the requirement of section 30 of the OFPP Act to designate a GPE. OFPP focused its review on electronic means that the Government has used in recent years to significantly increase access to Government procurement opportunities. Thus, in addition to FedBizOpps, consideration was given to CBDNet and the Federal Acquisition Computer Network

(FACNET). OFPP also sought to determine if suitable commercial alternatives presently exist to provide the single point of entry function.

Alternatives to FedBizOpps demonstrated benefits, some significant, over paper-based processes. However, when considering the Government's objectives in the aggregate (*i.e.,* creating a central point for electronic access to business opportunities, following the commercial lead, and facilitating reengineering for sellers and buyers), the alternatives did not exceed the benefits of FedBizOpps in serving as the GPE.

A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1997–304), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36

Government procurement.

Dated: August 15, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Commerce Business Daily (CBD)'' and ''Governmentwide point of entry (GPE)''; and in the definition ''Federal Acquisition Computer Network (FACNET) Architecture'' by removing the last sentence. The added text reads as follows:

2.101 Definitions.

* * * * *

Commerce Business Daily (CBD) means the publication of the Secretary of Commerce used to fulfill statutory requirements to publish certain public notices in paper form.

* * * * *

Governmentwide point of entry (GPE) means the single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at *http://www.fedbizopps.gov.*

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.501 [Amended]

3. Amend section 4.501 by removing the definition ''Single, Governmentwide point of entry.''

4. Amend section 4.502 by revising paragraph (b)(4) to read as follows:

4.502 Policy.

* * * * *

(b) * * *

(4) Include a single means of providing widespread public notice of acquisition opportunities through the Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

* * * * *

5. Amend section 4.803 by revising paragraph (a)(4) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(4) Synopsis of proposed acquisition as required by part 5 or a reference to the synopsis.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Add section 5.003 to read as follows:

5.003 Governmentwide point of entry (GPE).

For any requirement in the FAR to publish a notice in the CBD through the GPE, the contracting office may transmit the notice directly to the CBD if the contracting office lacks the capability to access the GPE and the notice is issued prior to October 1, 2001.

7. Amend section 5.101 by removing the introductory paragraph; and by revising paragraph (a) to read as follows:

5.101 Methods of disseminating information.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers must disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed $25,000, by synopsizing in the CBD (see 5.201). To satisfy this requirement, contracting officers must use the GPE, except as provided in 5.003.

(2) For proposed contract actions expected to exceed $10,000, but not expected to exceed $25,000, by displaying in a public place or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(d) and (g). The notice must include a statement that all responsible sources may submit a quotation which, if timely received, must be considered by the agency. Such information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(d) and (g) may be employed. For example, the requirements of 5.207(d) and (g) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or FACNET solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing such information.

* * * * *

8. Revise section 5.102 to read as follows:

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(4) of this section, the contracting officer must make available, through the GPE, solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the Interface

Description available via the Internet at *http://www.fedbizopps.gov.*

(2) The contracting officer is encouraged, when practicable and cost effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer must ensure that solicitations transmitted to FACNET are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) The contracting officer need not make a solicitation available through the GPE when—

(i) Disclosure would compromise the national security (*e.g.,* would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.,* size, format) does not make it cost effective or practicable for contracting officers to provide access through the GPE;

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest; or

(iv) The contracting office lacks the capability to access the GPE and the synopsis is issued prior to October 1, 2001.

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(4) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.,* CD–ROM, electronic mail) whenever practicable and cost effective. When solicitations are provided electronically on physical media (*e.g.,* disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a ''first-come-first served'' basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted.

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office to answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see subpart 4.5) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under part 6.

(f) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

9. Revise section 5.201 to read as follows:

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in 5.202 and the special situations in 5.205, the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in 5.101(a)(1);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in 5.101(a)(1); or

(iii) Contract action in any amount when advantageous to the Government.

(2) When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(3) When transmitting notices to FACNET, contracting officers must ensure the notice is forwarded to the GPE. Contracting officers must ensure that such notices are forwarded by the GPE to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d)(1) The GPE may be accessed via the Internet at *http://www.fedbizopps.gov.*

(2) Subscriptions to the CBD must be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (Tel. 202–512–1800).

10. Amend section 5.202 in paragraph (a)(13) by revising paragraph (a)(13)(ii) and by removing (a)(13)(iii) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(13) * * *

(ii) Will be made through FACNET or another means that provides access to the notice of proposed contract action through the GPE; and permits the public to respond to the solicitation electronically; or

* * * * *

11. Amend section 5.203 by revising the introductory paragraph, paragraphs (a), (b), and (e), the first sentence of paragraph (g), and paragraph (h) to read as follows:

5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE. The notice must be forwarded by the GPE, and published in the CBD, at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis/solicitation procedure (see 12.603).

(b) The contracting officer must establish a solicitation response time

that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions via FACNET or for which the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

* * * * *

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice in the CBD required in 5.201 for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

* * * * *

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted through the GPE or other means) following transmittal of the synopsis to the CBD. * * *

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice in the CBD and receipt of offers must be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD and the GPE, the contracting officer may reduce this time period to as few as 10 days.

12. Revise sections 5.204 and 5.205 to read as follows:

5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see 15.201 and 36.213–2). Synopsizing of a proposed contract action is required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers are encouraged to transmit to the GPE advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices must be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices must be entitled ''Research and Development Sources Sought,'' cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers must synopsize (see 5.201) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see part 35) or before changing its basic purpose and mission, the sponsor must transmit at least three notices over a 90-day period to the GPE and the **Federal Register**, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice must indicate the scope and nature of the effort to be performed and request comments. Notice is not required where action is required by law. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(c) *Special notices.* Contracting officers may transmit to the GPE, special notices of procurement matters such as business fairs, long-range procurement estimates, pre-bid/pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(d) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, contracting officers must transmit to the GPE each proposed contract action for which the total fee (including phases and options) is expected to exceed $25,000. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce. Reference must be made to the appropriate CBD Numbered Note.

(2) When the total fee is expected to exceed $10,000 but not exceed $25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

(e) *Effort to locate commercial sources under OMB Circular A–76.* When determining the availability of commercial sources under the procedures prescribed in subpart 7.3 and OMB Circular A–76, the contracting officer must not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement through the GPE at least three times in a 90 calendar-day period, with a minimum of 30 calendar days between each. When necessary to meet an urgent requirement, this may be limited to a total of two notices through the GPE in a 30 calendar-day period, with a minimum of 15 calendar days between each. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Circular.

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under subpart 19.8, the contracting officer must transmit a synopsis of the proposed contract action to the GPE. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce. The synopsis may be transmitted to the GPE concurrent with submission of the agency offering (see 19.804–2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

13. Amend section 5.206 by revising the introductory text of paragraph (a) to read as follows:

5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE, the CBD, or both to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, and small women-owned business concerns, and to meet the established subcontracting plan goals:

* * * * *

14. Amend section 5.207 by—

a. Redesignating paragraphs (a) through (h) as (b) through (i), respectively, and by adding a new paragraph (a);

b. Revising newly designated paragraph (b);

c. Revising the introductory text of newly designated paragraph (c), and adding under ''Format Item and Explanation/Description of Entry'' item numbers 18 and 19; and

d. Revising newly designated paragraph (i) to read as follows:

5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE or CBD must address the following data elements, as applicable:
(1) Action Code.
(2) Date.
(3) Year.
(4) Government Printing Office (GPO) Billing Account Code.
(5) Contracting Office Zip Code.
(6) Classification Code.
(7) Contracting Office Address.
(8) Subject.
(9) Proposed Solicitation Number.
(10) Opening/Closing Response Date.
(11) Contact Point/Contracting Officer.
(12) Contract Award and Solicitation Number.
(13) Contract Award Dollar Amount.
(14) Contract Line Item Number.
(15) Contract Award Date,
(16) Contractor.
(17) Description.
(18) Place of Contract Performance.
(19) Set-aside Status.

(b) *Transmittal*—(1) *GPE.* Transmissions must be in accordance with the Interface Description available via the Internet at *http://www.fedbizopps.gov*.

(2) *CBD*—(i) *Electronic transmission.* All synopses transmitted electronically to the CBD, other than through the GPE (see 5.003), must be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.

(ii) *Hard copy transmission.* When electronic transmission is not feasible (see 5.003), synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to: Commerce Business Daily, U.S. Department of Commerce, P.O. Box 77880, Washington, DC 20013–8880.

(c) *Format for the CBD.* The contracting officer must prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

* * * * *

18. *Place of contract performance.* (Include where applicable; where not applicable, enter N/A.)

19. *Set-asides.* (Identify if the proposed acquisition provides for a total or partial set-aside, a very small business set-aside, or a HUBZone small business set-aside. If not a set-aside, enter N/A.)

* * * * *

(i) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE or CBD. Cancellations of solicitations must be made in accordance with 14.209 and 14.404–1.

15. Amend section 5.301 by revising the introductory text of paragraph (a); by revising paragraphs (b)(7) and (c); and by adding paragraph (d) to read as follows:

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in 5.003, contracting officers must synopsize through the GPE awards exceeding $25,000 that are—

* * * * *

(b) * * *

(7) The contract action—

(i) Is for an amount not greater than the simplified acquisition threshold; and

(ii) Was conducted by using FACNET or access to the notice of proposed contract action was provided through the GPE and permitted the public to respond to the solicitation electronically; or

* * * * *

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit publication in the CBD, through the GPE, not later than 60 days after award.

(d) When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

16. Amend section 5.404–1 by revising paragraph (b)(3)(iii) to read as follows:

5.404–1 Release procedures.

* * * * *

(b) * * *

(3) * * *

(iii) More specific information relating to any individual item or class of items will not be furnished until the proposed acquisition is synopsized through the GPE or the solicitation is issued;

* * * * *

17. Revise section 5.404–2 to read as follows:

5.404–2 Announcements of long-range acquisition estimates.

Further publicizing, consistent with the needs of the individual case, may be accomplished by announcing through the GPE that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

PART 6—COMPETITION REQUIREMENTS

6.303–2 [Amended]

18. Amend section 6.303–2 in paragraph (a)(6) by removing ''CBD''.

PART 7—ACQUISITION PLANNING

19. Amend section 7.303 in paragraph (a) and the introductory text of paragraph (b) by removing ''shall'' and adding ''must'' in their place; and by revising paragraph (b)(1) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) * * *

(1) Synopsizing the requirement through the Governmentwide point of entry (GPE) in accordance with 5.205(e); and

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

20. Amend section 9.204 in the introductory text of paragraph (a) by removing ''shall''and adding ''must'' in its place; and by revising paragraph (a)(1) to read as follows:

9.204 Responsibilities for establishment of a qualification requirement.

* * * * *

(a) * * *

(1) Periodically furnish through the Governmentwide point of entry (GPE) notice seeking additional sources or products for qualification unless the contracting officer determines that such publication would compromise the national security. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily (CBD) to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A).

* * * * *

21. Amend section 9.205 by revising the introductory text of paragraph (a) to read as follows:

9.205 Opportunity for qualification before award.

(a) If an agency determines that a qualification requirement is necessary, the agency activity responsible for establishing the requirement must urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity must, before establishing any qualification requirement, furnish notice through the GPE. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A). The notice must include—

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

22. Amend section 12.603—

a. In the introductory text of paragraph (a) by removing ''Commerce Business Daily (CBD)'';

b. By revising paragraph (a)(1);

c. In paragraph (a)(2) by removing ''CBD'';

d. In paragraph (c)(2)(xv) by removing ''Commerce Business Daily''; and

e. By revising paragraphs (c)(3) and (c)(4) to read as follows:

12.603 Streamlined solicitation for commercial items.

(a) * * *

(1) Whether transmission is made directly to the Commerce Business Daily (CBD) or through the Governmentwide point of entry (GPE), section 5.207 limits descriptions in the CBD to 12,000 textual characters (approximately 3½ single-spaced pages).

* * * * *

(c) * * *

(3) Allow response time for receipt of offers as follows:

(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined synopsis/solicitation, contracting officers must establish a response time in accordance with 5.203(b) (but see 5.203(h)).

(4) Publicize amendments to solicitations in the same manner as the initial synopsis/solicitation.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

23. Amend the introductory paragraph of section 13.104 and the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in their place; and by revising the first sentence of paragraph (b) to read as follows:

13.104 Promoting competition.

* * * * *

(b) If using simplified acquisition procedures and not using either FACNET or providing access to the notice of proposed contract action and access to the solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area.

* * *

* * * * *

13.105 [Amended]

24. Amend section 13.105 in the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in its place; and in paragraph (a)(1)(ii) by removing ''single, Governmentwide point of entry'' and adding ''GPE'' in its place.

PART 14—SEALED BIDDING

25. Revise section 14.203–2 to read as follows:

14.203–2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing through the Governmentwide point of entry (GPE) are set forth in 5.101 and 5.2.

(b) For procedures that apply to publicizing notices through the GPE to determine whether commercial sources are available, as prescribed by OMB Circular A–76, see 5.205(e) and 7.303(b).

26. Amend section 14.503–2 by revising paragraphs (a)(4) and (b) to read as follows:

14.503–2 Step two.

(a) * * *

(4) Not be synopsized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see 5.101(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see 5.207(a)(1)).

PART 19—SMALL BUSINESS PROGRAMS

27. Amend section 19.202–2 in the introductory paragraph by removing ''shall'' and adding ''must'' in its place; and by revising paragraph (c) to read as follows:

19.202–2 Locating small business sources.

* * * * *

(c) Publicize solicitations and contract awards through the Governmentwide point of entry (GPE) (see subparts 5.2 and 5.3).

28. Amend section 19.804–2—

a. In the first sentence of the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in its place;

b. In paragraph (a)(9) by removing ''Commerce Business Daily'' and adding ''Governmentwide point of entry (GPE)'' in its place; and

c. By revising the third and fourth sentences of paragraph (c) to read as follows:

19.804–2 Agency offering.

* * * * *

(c) * * * All requirements, including construction, must be synopsized through the GPE. For construction, the synopsis must include the geographical

area of the competition set forth in the SBA's acceptance letter.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

29. Amend section 22.1009–4 in paragraph (a) by removing ''shall'' and adding ''must'' in its place; and by revising the introductory text of paragraph (b) to read as follows:

22.1009–4 All possible places of performance not identified.

* * * * *

(b) Include the following information in the notice of contract action (see 5.207(g)(4)):

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION

34.005–2 [Amended]

30. Amend section 34.005–2 in paragraph (a)(1) by removing ''publication in the Commerce Business Daily'' and adding ''publicizing through the Governmentwide point of entry'' in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

31. Amend section 35.004 in the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in its place; and by revising paragraph (a)(1) to read as follows:

35.004 Publicizing requirements and expanding research and development sources.

(a) * * *

(1) Early identification and publication of agency R&D needs and requirements, including publicizing through the Governmentwide point of entry (GPE) (see part 5);

* * * * *

32. Amend section 35.016 by revising paragraph (c) to read as follows:

35.016 Broad agency announcement.

* * * * *

(c) The availability of the BAA must be publicized through the Governmentwide point of entry (GPE) and, if authorized pursuant to subpart 5.5, may also be published in noted scientific, technical, or engineering periodicals. The notice must be published no less frequently than annually. When transmitting a notice to the GPE, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily to satisfy the requirement of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

33. Amend section 36.213–2 in the introductory text of paragraph (b) by removing ''shall'' and adding ''must'' in its place; and by revising paragraph (b)(9) to read as follows:

36.213–2 Presolicitation notices.

* * * * *

(b) * * *

(9) Be publicized through the Governmentwide point of entry in accordance with 5.204.

[FR Doc. 00–21182 Filed 8–18–00; 8:45 am]

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Federal Register

Monday,
August 21, 2000

Part VII

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Part 14, et al.
Consumer Protections for Depository Institution Sales of Insurance; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 14

[Docket No. 00–16]

RIN 1557–AB81

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1079]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064–AC37

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 536

[Docket No. 2000–68]

RIN 1550–AB34

Consumer Protections for Depository Institution Sales of Insurance

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively, the Agencies) are requesting comment on proposed insurance consumer protection rules. These rules are published pursuant to section 47 of the Federal Deposit Insurance Act (FDIA), which was added by section 305 of the Gramm-Leach-Bliley Act (the G–L–B Act or Act). Section 47 directs the Agencies jointly to prescribe and publish consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a depository institution [1] or any person that is engaged in such activities at an office of the institution or on behalf of the institution.

DATES: Comments must be received by October 5, 2000.

ADDRESSES: Comments should be directed to:

Office of the Comptroller of the Currency (OCC): Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Washington, DC 20219, Attention: Docket No. 00–16; FAX number (202) 874–5274 or Internet address: regs.comments@occ.treas.gov. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board of Governors of the Federal Reserve System (Board): Comments, which should refer to Docket No. R–1079, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m., pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

Federal Deposit Insurance Corporation (FDIC): Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. (Fax number (202) 898–3838). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

Office of Thrift Supervision (OTS): Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–68. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is 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 Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. Comments will also be posted on the OTS Internet Site at ots.treas.gov.

FOR FURTHER INFORMATION CONTACT:

OCC: Stuart Feldstein, Assistant Director, or Michele Meyer, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Asa Chamberlayne, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210; Stephanie Boccio, Asset Management, (202) 874–4447; Barbara Washington, Core Policy Development (202) 874–6037, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Richard M. Ashton, Associate General Counsel, Legal Division, (202) 452–3750; Angela Desmond, Special Counsel, Division of Banking Supervision and Regulation, (202) 452–3497; David A. Stein, Attorney, Division of Consumer and Community Affairs, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Janice Simms, (202) 872–4984.

FDIC: Keith A. Ligon, Chief, Policy Unit, Division of Supervision, (202) 898–3618; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–3581; Jason C. Cave, Senior Capital Markets Specialist, (202) 898–3548, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Robyn Dennis, Manager, Supervision Policy, (202) 906–5751; Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Mary Jane Cleary, Insurance Risk Management Specialist, (202) 906–7048, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1999, President Clinton signed the G–L–B Act into law.

[1] ''Depository institution'' means national banks in the case of institutions supervised by the OCC, state member banks in the case of the Board, state nonmember banks in the case of the FDIC, and savings associations in the case of the OTS.

Section 305 of the Act [2] added new section 47 to the FDIA, captioned ''Insurance Customer Protections.'' This section requires the Agencies jointly to prescribe and publish in final form, by November 12, 2000, consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of insurance products by depository institutions or persons engaged in these activities at an office of the institution or on behalf of the institution. Section 47 directs the Agencies to include specific provisions relating to sales practices, disclosures and advertising, the physical separation of banking and nonbanking activities, and domestic violence discrimination.

Section 47 also requires the Agencies to consult with the State insurance regulators, as appropriate. The Agencies circulated a working draft of this proposal to the National Association of Insurance Commissioners (NAIC) and, on June 29, 2000, met with NAIC representatives to discuss the proposal. These proposed rules reflect certain comments received from the NAIC in that meeting.

The texts of the Agencies' proposed rules are substantially identical. Any differences in style or terms are not intended to create substantive differences in the requirements imposed by the regulations. The Agencies request comment on all aspects of the proposed rules and on the specific provisions and issues highlighted in the section-by-section analysis.

Section-by-Section Analysis

The discussion that follows applies to each of the Agencies' proposed rules. Given that each agency will assign a different part to its insurance consumer protection rule, the citations are to sections only, leaving citations to part numbers blank.[3]

Section ____.10 Purpose and Scope

These proposed rules establish consumer protections in connection with retail sales of insurance products and annuities [4] to consumers by any depository institution or by any person that is engaged in such activities at an office of the institution or on behalf of the institution.[5] A number of issues that clarify the scope of the rule are addressed through specific definitions discussed below.

For example, section 47 gives the Agencies discretion to determine whether the Act's consumer protections should extend to a depository institution's subsidiary in other circumstances. The Agencies have determined to apply the proposed rules to subsidiaries only if they are selling insurance products or annuities at an office of the institution or acting ''on behalf of'' the depository institution as defined in the rules.[6] A more complete discussion of when a person is engaged in insurance activities ''on behalf'' of the depository institution is set forth below in the definition of ''covered person.'' In addition, the Agencies intend to cover insurance and annuities sales activities on the institution's Internet web site and other forms of electronic media.

Section ____.20 Definitions

a. *Affiliate.* The proposed rules use the definition of ''affiliate'' that is used in section 3 of the Federal Deposit Insurance Act (FDIA),[7] which, in turn, refers to section 2(k) of the Bank Holding Company Act of 1956 (BHCA).[8] Companies are affiliates if one company controls, is controlled by, or is under common control with another company.

b. *Company.* The proposed rules use the definition of ''company'' that is used in section 3 of the FDIA,[9] which, in turn, refers to section 2(b) of the BHCA.[10] A ''company'' includes corporations, partnerships, business trusts, associations and similar organizations.

c. *Consumer.* The proposed rules define ''consumer'' as an individual who obtains, applies for, or is solicited to obtain insurance products or annuities from a covered person. Section 47 uses the terms ''consumer'' and ''customer'' interchangeably and without appearing to draw distinction between the two terms. These proposed rules use the term ''consumer.'' The Agencies request comment on whether the definition of ''consumer'' should be expanded to encompass all retail customers, including small businesses. The Agencies also seek comment on whether to limit the definition of consumer to individuals who obtain or apply for insurance products or annuities primarily for personal, family, or household purposes.

d. *Control.* The proposed rules use the definition of ''control'' used in section 3(w)(5) of the FDIA,[11] which, in turn, refers to section 2 of the BHCA.[12] Under this definition, which is used to determine when companies are affiliates, a company has control over another company if:

(1) The company directly or indirectly controls 25 percent or more of any class of the company's voting securities;

(2) The company controls in any manner the election of a majority of the directors or trustees of the company; or

(3) The Board determines that the company exercises, directly or indirectly, a controlling influence over the management or policies of the company.[13] For purposes of the definition of ''control'' in these rules, the reference in section 2 of the BHCA to the ''Board'' means the ''appropriate Federal banking agency,'' as defined in section 3(q) of the FDIA.[14]

e. *Covered person or you.* The term ''covered person,'' or ''you,'' is critical in determining to whom the requirements in these proposed rules will apply. As defined in the proposed rules, a covered person means any depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the institution or on behalf of the institution. A ''covered person'' may include any person, including an affiliate, if the person or one of its employees engages in such activities at an office of an institution or on behalf of an institution.

For purposes of this definition, a person's activities are ''on behalf of'' a depository institution if:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the institution;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the institution or an affiliate;

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[2] Pub. L. 106–102, sec. 305, 113 Stat. 1338, 1410–15 (to be codified at 12 U.S.C. 1831x).

[3] The Board's proposed rule would be a new subpart of the Board's existing Regulation H, and not a separate regulation. Accordingly, the sections of the Board's proposed rule are numbered consecutively.

[4] These proposed rules are not intended to have any effect on whether annuities are considered to be insurance products for purposes of any other section of the G–L–B Act or other laws. That question depends on the terms and purposes of those laws, as interpreted by the courts and the appropriate agency.

[5] The Agencies note that other State consumer protection rules also may apply to bank and thrift insurance sales.

[6] OTS does not intend the requirements of this part to apply to other savings association operating subsidiaries or service corporations by effect of 12 CFR 559.3(h). OCC does not intend the requirements of this part to apply to other national bank operating subsidiaries by effect of 12 CFR 5.34(e)(3).

[7] 12 U.S.C. 1813(w)(6).

[8] 12 U.S.C. 1841(k).

[9] 12 U.S.C. 1813(w)(7).

[10] 12 U.S.C. 1841(b).

[11] 12 U.S.C. 1813(w)(5).

[12] 12 U.S.C. 1841.

[13] 12 U.S.C. 1841(a)(2).

[14] 12 U.S.C. 1813(q).

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the institution or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the institution or uses its corporate logo or corporate name.

The Agencies note that the second prong of the ''on behalf of'' test—the receipt of commissions or fees—does not include situations in which the institution receives a fee solely for performing a separate service or function that may relate to an insurance sale (such as processing a credit card charge for the insurance premium, or performing recordkeeping or payment functions on behalf of the affiliate) where the fee is based on that service or function and is not a share of the commissions or fees derived from the insurance product or annuity sale.

The Agencies seek comment on the proposed definition of covered person and specifically on those activities that would cause a person to be considered to be acting ''on behalf of'' an institution. The Agencies also invite comment on whether the following should be considered an activity on behalf of the institution:

- The use of the name or corporate logo of the holding company or other affiliate, as opposed to the name or corporate logo of the depository institution in documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity.
- The sale, solicitation, advertising, or offer of an insurance product or annuity at an off-premises site that identifies or refers to the holding company or other affiliate, as opposed to the depository institution, or uses the name or corporate logo of the holding company or other affiliate.

The agencies recognize that when electronic media are used, special issues arise. For example, a depository institution's web site may link or refer a consumer to a separate insurance agency, which may be operated by the institution or an affiliate of the institution or may be unaffiliated. In this kind of transaction, although the depository institution is identified to the consumer through its web site, the mandatory disclosures and other protections of the proposed rules may not be necessary. There may be instances where a depository institution is not engaged in the sale or solicitation of an insurance product or annuity, but instead acting as a finder by providing consumers web links to providers of insurance products and annuities. Comment is solicited on whether, and under what circumstances, additional disclosures should be required for sales or solicitations by electronic media in order to alleviate any potential confusion as to the identity of source of the insurance, such as a disclosure informing consumers when they are leaving the institution's web site. Also, comment is solicited on whether additional or alternative disclosures might be needed in instances where the depository institution acts as finder by electronic media.

f. *Domestic violence.* The statute also contains a provision prohibiting the consideration of a person's status as a victim of domestic violence or provider of services to victims of domestic violence in connection with certain insurance activities. Accordingly, the proposed rules prohibit a covered person, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claim, on a life or health insurance product from considering as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under state law. *See* proposed § ____.30(c). The proposed rules adopt the definition of ''domestic violence'' set forth in section 47 of the FDIA.

g. *Electronic media.* Section 47 permits the Agencies to make adjustments to the Act's requirements for sales conducted in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and consumer acknowledgment of the receipt of such disclosures. The proposed rules set forth special rules for electronic disclosures and consumer acknowledgments and for telephone sales. *See* proposed § ____.40. The Agencies recognize that methods of electronic communication are rapidly changing and have attempted to provide flexibility in these proposed rules to accommodate such changes. Thus, the proposed rules define ''electronic media'' broadly to include any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, such as a personal computer. The reference to personal computers is illustrative only and the reference to equipment includes other electronic devices that meet the definition.

The Agencies invite comment on the proposed definition of ''electronic media'' and whether a more expansive definition would be consistent with the G–L–B Act's requirement that disclosures be both written and oral.

h. *Office.* The proposed rules define ''office'' as the premises of an institution where retail deposits are accepted from the public.

i. *Subsidiary.* The proposed rules use the definition of subsidiary in section 3(w)(4) of the FDIA.[15] Thus, ''subsidiary'' means any company that is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

The proposed rules do not define the term ''insurance product.'' The Agencies recognize that there is no single standard for defining the term ''insurance'' and that its definition may vary significantly depending on the context in which it is used. For example, section 302 of GLBA lists certain types of products that may constitute insurance for purposes of determining when a national bank may underwrite, rather than sell, insurance. Thus, the Agencies will look to a variety of sources in determining whether a given product is covered by the proposed rules. In addition to section 302(c), the Agencies will look to common usage, conventional definitions, judicial interpretations, and other Federal laws. The Agencies invite comment on these and other sources for determining whether a product comes within the scope of the proposed rules, or, alternatively, whether the rule should include a specific definition of the term ''insurance.''

Section ____.30 Prohibited Practices

The G–L–B Act directs the Agencies to include in the implementing regulations specific prohibited practices. Under section 47(b) of the FDIA, a covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of the anti-tying provisions of section 106(b) of the Bank Holding Company Act Amendments of 1970,[16] is conditional upon either:

(1) The purchase of an insurance product or annuity from the depository institution or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the

[15] 12 U.S.C. 1813(w)(4).

[16] 12 U.S.C. 1972. Section 106(b) of the Bank Holding Company Act Amendments of 1970 does not apply to savings associations. Those institutions are, however, subject to comparable prohibitions on tying and coercion, under section 5(q) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(q). Accordingly, OTS's proposed rule cites the HOLA provision.

consumer from obtaining, an insurance product or annuity from an unaffiliated entity. These prohibitions on tying and coercion are set forth in proposed § ____.30(a).

Section 47(c)(2) of the FDIA also prohibits a covered person from engaging in any practice at any office of, or on behalf of, a depository institution or a subsidiary of a depository institution that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The uninsured nature of any insurance product or annuity offered for sale by the covered person or subsidiary;

(2) In the case of an insurance product or annuity that involves investment risk, the investment risk associated with any such product; or

(3) The fact that the approval of an extension of credit to a consumer by the institution or subsidiary may not be conditioned on the purchase of an insurance product or annuity from the institution or subsidiary, and that the consumer is free to purchase the insurance product or annuity from another source. These prohibitions on misrepresentations are set forth in proposed § ____.30(b).

Finally, proposed § ____.30(c) implements section 47(e) of the FDIA, which, as already noted, prohibits a covered person from considering a person's status as a victim of domestic violence or a provider of services to domestic violence victims in making decisions regarding certain types of insurance products.

Section ____.40 What a Covered Person Must Disclose

In addition to prohibiting the misrepresentations outlined above, section 47(c) of the FDIA requires a covered person to make affirmative disclosures in connection with the initial purchase of an insurance product or annuity. The proposed rules require the following disclosures:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository institution or (if applicable) an affiliate;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the depository institution, or (if applicable) an affiliate;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The depository institution may not condition an extension of credit on either the consumer's purchase of an insurance product or annuity from the depository institution or any of its affiliates or the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Timing and Method of Disclosures

Under proposed § ____.40(b)(1), a covered person must provide the disclosures described in § ____.40(a) orally and in writing before the completion of the sale of an insurance product or annuity to a consumer. The disclosures concerning the prohibition on tying an extension of credit to an insurance product or annuity purchase (§ ____.40(a)(4)) must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold.

Electronic and Telephone Disclosures

Section 47 of the FDIA authorizes the Agencies to make necessary adjustments to the G–L–B Act's requirements for sales conducted by telephone or by electronic media. Proposed §§ ____.40(b)(2) sets forth special timing and method of disclosure rules for electronic and telephone disclosures. Under § ____.40(b)(2)(i), where the consumer affirmatively consents, a covered person may provide the written disclosures required by § ____.40(a) through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically, such as by downloading. Under § ____.40(b)(2)(ii), if the sale of an insurance product or annuity is conducted entirely through the use of electronic media and written disclosures are provided electronically, a covered person is not required to provide disclosures orally. A covered person must also comply with all other requirements imposed by law or regulation for providing disclosures electronically.

If a covered person takes an application for credit by telephone, § ____.40(b)(1) provides that the covered person may provide the written disclosure required by paragraph (a)(4) by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). Nevertheless, disclosures under § ____.40(a)(1)–(4) must be made in writing before completion of the initial sale. The Agencies invite comment on the proposed rules for electronic and telephone disclosures. Specifically, the Agencies request comment on whether the rules are flexible enough to permit future technological innovation and whether the format and timing requirements are sufficient to provide consumers with the type of protections envisioned by section 47 of the FDIA.

The Agencies note that new legislation addressing the use of electronic signatures and electronic records may affect institutions that provide disclosures and obtain acknowledgments electronically. The Electronic Signatures in Global and National Commerce Act (the E-Sign Act)[17] contains, among other things, Federal rules governing the use of electronic records for providing required information to consumers. A legal requirement that consumer disclosures be in writing may be satisfied by an electronic disclosure if the consumer affirmatively consents and if certain other requirements of the E-Sign Act are met. For example, the E-Sign Act requires that, before a consumer consents to receive electronically information that is otherwise legally required to be provided in writing, the consumer must receive a ''clear and conspicuous statement'' containing certain information prescribed by the statute.[18] The statute authorizes Federal regulatory agencies to exempt specified categories or types of records from the E-Sign Act requirements relating to consumer consent only if an exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.[19] The Agencies invite comment on whether—and, if so, how—they should address the requirements of the E-Sign Act in the context of these proposed rules.

Disclosures Must Be Readily Understandable, Designed To Call Attention to the Information, and Meaningful

Section 47 of the FDIA requires the Agencies to promulgate regulations encouraging the use of disclosures that are conspicuous, simple, direct, and readily understandable. Proposed § ____.40(b)(4) contains this requirement and further requires that the disclosures must also be designed to call attention to the nature and significance of the

[17] Pub. L. 106–229, 114 Stat. 464 (June 30, 2000). The E-Sign Act generally takes effect on October 1, 2000, although there are delayed effective dates for provisions other than those discussed in the text.

[18] See Pub. L. 106–229, sec. 101(c)(1).

[19] *Id.* at § 104(d)(1).

information provided. For example, a covered person may use the following short-form disclosures as may be appropriate:

- Not a Deposit
- Not FDIC-Insured
- Not insured by any Federal Government Agency
- Not Guaranteed by the Bank [or Savings Association]
- May Go Down in Value

The Agencies invite comment on whether the final rule should provide specific methods of calling attention to the material contained in the disclosures. For example, the final rule could provide that the disclosures are designed to call attention to the nature and significance of the information provided if they use:

- A plain-language heading to call attention to the disclosures;
- A typeface and font or type size that are easy to read;
- Wide margins and ample line spacing;
- Boldface or italics for key words; and
- Distinctive type or font size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

Further, as provided in proposed § ____.40(b)(4), a disclosure generally is not ''meaningfully'' provided if a covered person merely tells the consumer that the disclosures are available in printed material without also providing the material and orally disclosing the information to the consumer. Similarly, a disclosure made through electronic media is not meaningfully provided if the consumer may bypass the visual text of the disclosure before purchasing an insurance product or annuity.

The Agencies invite comment on whether these standards will adequately address situations where disclosures are made through electronic media. For example, the Federal Trade Commission (FTC) recently released guidance on online advertising and sales reiterating that many of the general principles of advertising law apply to Internet advertisements, but recognizing that developing technology raises new issues.[20] The FTC guidance describes information businesses should consider when developing their online advertisements to ensure compliance with consumer protection laws with a particular focus on providing clear and conspicuous disclosures in Internet advertisements and sales. The FTC guidance establishes several key factors to consider when evaluating the clarity and conspicuousness of Internet disclosures including:

(1) The placement of the disclosures in the advertisement and the disclosures' proximity to the relevant claim;

(2) The prominence of the disclosure and whether other features in the advertisement distract attention from the disclosure;

(3) How often the disclosures should be repeated relative to the length of the advertisement; and

(4) Whether audio disclosures are presented in an adequate volume and cadence that consumers can hear and understand. The guidance also suggests evaluating whether visual disclosures appear for a sufficient duration appropriate for consumers to notice, read and understand. The Agencies seek comment on whether the type of detail provided in the FTC guidance is necessary in these proposed rules.

Consumer Acknowledgment

Under proposed § ____.40(b)(5), a covered person must obtain from the consumer, at the time the consumer receives the disclosures set forth in proposed § ____.40(a), a written acknowledgment by the consumer that the consumer received the disclosures. In keeping with the allowance under section 47 for adjustments to the G–L–B Act's requirements for sales conducted by electronic media and the E-Sign Act, proposed § ____.40(b)(5) further provides that a consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

Advertisements and Other Promotional Material

In accordance with section 47(c)(1)(C) of the FDIA, proposed § ____.40(c) clarifies that the disclosures required by proposed § ____.40 are not required in advertisements of a general nature describing or listing the services or products offered by the depository institution.

Section ____.50 Where Insurance Activities May Take Place

Section 47(d)(1) of the FDIA requires that the Agencies' regulations include provisions to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity. Proposed § ____.50(a) sets forth this general rule. It further requires that, to the extent practicable, a depository institution identify areas where insurance product or annuity sales activities occur and clearly delineate and distinguish them from the areas where the institution's retail deposit-taking activities occur, in accordance with section 47(d)(2)(A) of the FDIA.

Proposed § ____.50(b) implements section 47(d)(2)(B) of the FDIA, concerning referrals to insurance and annuity sales personnel by a person who accepts deposits from the public. Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a depository institution may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product. The person making the referral may only receive a one-time, nominal fee of a fixed dollar amount for each referral. The fee may not depend on whether the referral results in a transaction.

Section ____.60 Qualification and Licensing Requirements for Insurance Sales Personnel

Section 47(d)(2)(C) of the FDIA requires that the Agencies' regulations prohibit any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed. Thus, under proposed § ____.60, a depository institution may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix—Consumer Grievance Process

Section 47(f) of the FDIA requires that the Agencies jointly establish a consumer complaint mechanism for addressing consumer complaints alleging violations of these proposed rules. Each agency has procedures in place to handle consumer complaints. The Agencies will apply those procedures to complaints involving these proposed rules. The Appendix to each agency's proposed rule contains the name and address of each agency's consumer complaint office. Any consumer who believes that a depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the institution or on behalf of the institution

[20] The FTC's guidance, Dot Com Disclosures: Information about Online Advertising is available at www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.html.

has violated the requirements of these proposed rules should contact the consumer complaint office listed in the Appendix. Each agency already has entered into, or is developing, agreements with State insurance commissioners regarding the sharing of consumer complaints. Consumer complaints alleging violations of these proposed rules that raise issues under State and local law will be shared with State regulators pursuant to those agreements.

Effect on Other Authority

Section 47(g) sets forth a general framework for determining the effect of these proposed rules on State law. Under that framework, the Agencies' insurance consumer protection rules will not apply in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the Agencies' rules. If the Board, FDIC and OCC jointly determine, however, that the protection afforded by a provision of these proposed rules is greater than the protection provided by comparable state law or rulings, these proposed rules shall preempt the contrary or inconsistent State law or ruling. Prior to making this determination, the Board, FDIC and OCC must notify the appropriate State regulatory authority in writing, and the Board, FDIC and OCC will consider comments submitted by the appropriate State regulatory authorities. If the Board, FDIC and OCC determine that a provision of these proposed rules affords greater protection than State provisions, the Board, FDIC and OCC will send a written preemption notice to the appropriate State insurance authority that the provision of these proposed rules will be applicable unless the State adopts legislation within three years to override the preemption notice.

The Board, FDIC and OCC invite comment on whether it would be helpful to include a second appendix restating these statutory requirements or whether such a restatement would be confusing absent a determination regarding the applicability of specific State laws.

Regulatory Analysis

A. Paperwork Reduction Act

The Agencies invite comment on:

(1) Whether the collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of each Agency's functions, including whether the information has practical utility;

(2) The accuracy of each Agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Respondents are not required to respond to these collections of information unless they display a currently valid Office of Management and Budget (OMB) control number. The Agencies are currently requesting their respective control numbers for these information collections from OMB.

This proposed regulation contains requirements to make disclosure at two different times. The respondents must prepare and provide certain disclosures to consumers: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are solicited, offered or sold in connection with an extension of credit) (proposed § ____.40(b)(1)). The Agencies request public comment on all aspects of the collections of information contained in these proposed rules.

OCC: The collection of information requirements contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to Jessie Dunaway, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557-to be assigned), Washington, DC 20503.

The likely respondents are national banks, District of Columbia banks, and Federal branches and agencies of foreign banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a national bank or on behalf of a national bank. The proposal would impose two types of information collection requirements on national banks. The first is the requirement that printed disclosure materials be modified to conform to the requirements of the regulation. The OCC estimates the burden associated with this start-up requirement as follows:

Estimated number of respondents: 1,949.

Estimated number of responses: 1,949.

Estimated burden hours per response: 10.

Estimated total burden: 19,490 hours.

This estimate assumes 10 hours would be involved in the development of the disclosures required by this part for each national bank that sells insurance. The total burden will exceed 19,490 hours, however, because the proposal also requires that disclosures be provided to individual consumers in connection with particular transactions. Estimation of this burden requires the OCC to estimate the number of consumer transactions per bank (or entity selling on behalf of a bank) per year in which disclosures are required to be provided and the amount of time per transaction providing the disclosures will take. The OCC does not currently collect this type of information. We invite comment on what assumption we should use in arriving at a revised estimate of total burden for purposes of the final rule.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320, appendix A1), the Board reviewed the notice of proposed rulemaking under the authority delegated to the Board by the OMB. Comments on the collections of information should be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with a copy to the Office of Management and Budget, Paperwork Reduction Project (7100-to be assigned), Washington, DC 20503.

The likely respondents are state member banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a state member bank or on behalf of a state member bank.

Estimated number of respondents: 1,010.

Estimated number of responses: 553,079.

Estimated burden hours per response: 5 minutes.

Estimated total burden: 46,090 hours.

FDIC: The collections of information contained in the notice of proposed rulemaking will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Comments on the collections of

information should be sent to Steven F. Hanft, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project (3064-to be assigned), Washington, DC 20503.

The likely respondents are insured nonmember banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of an insured nonmember bank or on behalf of an insured nonmember bank.

Estimated number of respondents: 5800.

Estimated number of responses: 920,000.

Estimated burden hours per response: 5 minutes.

Estimated total burden: 76,667 hours.

OTS: The collection of information requirements contained in the notice of proposed rulemaking will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. Comments on the collection of information should be sent to the Dissemination Branch (1550-to be assigned), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1550-to be assigned), Washington, DC 20503.

The likely respondents are savings associations and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a savings association or on behalf of a savings association.

Estimated number of respondents: 1,097.

Estimated number of responses: 567,432.

Estimated average hours per response: 5 minutes.

Estimated total burden: 47,286 hours.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act requires federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC is of the opinion that this proposal is unlikely to have a significant impact on a substantial number of small entities if it is adopted in final form. Because the proposal implements new legislation, however, the OCC lacks historical information specific to the requirements in the proposal on which to base estimates of cost. For this reason, the OCC has prepared the following IRFA. We invite comment on whether the assumptions used in the IRFA are accurate, as well as any compliance cost estimate that national banks can provide.

Reasons, Objectives, and Legal Basis for the Proposal

The OCC is issuing this proposal to implement section 305 of the G–L–B Act. A fuller discussion of the reasons for, objectives of, and legal basis for the proposed rules appears elsewhere in the Supplementary Information.

Reporting, Recordkeeping, and Compliance Requirements of the Proposal

The proposal requires national banks (and entities acting on behalf of national banks) to amend the written materials and Internet web sites they use in connection with the retail sale, solicitation, advertising, or offer of insurance products to consumers. The proposal also requires national banks (and entities acting on their behalf) to obtain from consumers acknowledgment that the consumer has received certain disclosures. The substance of these requirements is described in detail elsewhere in the **SUPPLEMENTARY INFORMATION.**[21]

The OCC believes that most national banks will be able to satisfy the disclosure provisions by including the information required to be disclosed in their written materials with minimal cost. We estimate that most banks maintain a 3 to 4 month inventory of those materials. The OCC expects that there will be several months between publication of this proposal and the effective date of the final rules, which should allow for most banks to use up their inventory of printed materials before the final rules take effect. Nevertheless, our analysis assumes that some banks may need to amend the written materials they have in inventory during an interim period between the effective date of the final rule and the next regularly scheduled printing of those materials because their inventories will not be depleted during that time. These banks—which are probably smaller banks that order written materials infrequently and in large quantities to obtain reduced rates on printing—would therefore incur costs as a result of this requirement.

There are approximately 25 national banks that sell insurance products over the Internet. Our experience has been that Internet banks regularly upgrade their web sites. Adding the required disclosures could be done as part of a regular upgrade and would therefore present only minimal additional costs to the bank.

The primary cost associated with the requirement that a bank obtain from the consumer a written acknowledgment of the consumer's receipt of the disclosures is, in the OCC's opinion, likely to be the cost of developing the written acknowledgment. Banks that sell insurance products over the Internet should, as part of a regularly scheduled upgrade, be able to revise their web sites to include a series of ''click throughs'' that will require affirmation from the customer that he or she has received the required disclosures.

Description of the Small Entities to Which the Proposal Would Apply

As of January, 1999, 1,949 national banks or national bank subsidiaries were engaged in insurance activities that would bring them within the scope of coverage of the proposed rule. We estimate that 976 of the national banks that sold insurance as of January, 1999, had $100 million or less in assets.[22]

Significant Alternatives to the Proposal

Section 305 of the G–L–B Act expressly prescribes the content of its implementing regulations. The OCC's proposal does not depart materially from the requirements of the statute. The statute does not authorize the OCC to provide exemptions or exceptions to its requirements for small national banks.

In preparing the proposal, the OCC has considered the burden on small national banks to the extent that it has the discretion to do so. The Supplementary Information describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include providing a more expansive definition of ''electronic media'' to allow even more flexibility in meeting the disclosure and consumer acknowledgment requirements, and ensuring that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.

The OCC requests comment on whether these, or other approaches that

[21] The proposed rule also requires national banks to keep the area where the bank conducts insurance transactions physically separate from the areas where retail deposits are routinely accepted from the general public ''to the extent practicable.'' This requirement, which is worded like the requirement in the statute, leaves significant discretion to each national bank to determine what costs, if any, the bank must incur in order to avoid customer confusion.

[22] For Regulatory Flexibility Act purposes, small national banks are generally defined as those with assets under $100 million.

are available in light of the express requirements of section 305, would be appropriate to reduce regulatory burden on small national banks.

Duplicative, Overlapping, or Conflicting Federal Rules

As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (Interagency Statement), the term ''nondeposit investment products,'' includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited. The proposed rules do not appear to conflict materially with the Interagency Statement.

Board: The Regulatory Flexibility Act (5 U.S.C. 603) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking unless the proposed rule would not have a significant impact on a substantial number of small entities. Based on available data, the Board is unable to determine at this time whether the proposed rule would have a significant impact on a substantial number of small entities.

A description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material above. The Board's proposed rule is virtually identical to the rules proposed by the other Federal banking agencies for the depository institutions over which they have primary supervisory authority.

The proposed rule would apply to all state member banks and any other person who sells, solicits, advertises, or offers an insurance product or annuity to an individual at an office of a state member bank or on behalf of the bank. As of year-end 1999, there were approximately 1,010 state member banks. The Board estimates that approximately 480 state member banks have assets less than $100 million. Based on available data, the Board is unable to estimate the number of other persons who engage in retail insurance activities at an office of a state member bank or on behalf of such a bank, or how many of these other persons are small entities.

As explained in the supplementary material above, the substantive provisions of the proposed rule are required by section 47 of the FDIA. Under the proposed rule, state member banks and other covered persons engaging in retail insurance activities must make disclosures to consumers and obtain the consumers' acknowledgment of the receipt of the disclosures. Banks that conduct insurance transactions by means of electronic media may be required to modify their current procedures for these transactions.

Some insurance products or annuities that are covered by the proposed rule may also be considered nondeposit investment products that are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (''Interagency Statement''). The Interagency Statement provides for consumer disclosure, acknowledgment, separation of activities, and personnel qualification requirements that are similar to the provisions of the proposed rule. The Board does not believe that the proposed rule would conflict materially with the Interagency Statement. The proposed rule incorporates the statutory prohibition on tying arrangements in section 106(b) of the Bank Holding Company Amendments of 1970 (12 U.S.C. 1972).

As explained above, the substantive provisions of proposed rule are required by section 47 of the FDIA. Section 47 applies to all depository institutions, regardless of size, and does not provide the Federal banking agencies with the authority to exempt a small institution from the requirements of the statute. Under section 47, the regulations required by that section do not extend to any subsidiary of a depository institution if the banking agencies determine that such an extension of the protections in the statute is not necessary. The Board's proposed rule would apply only to those subsidiaries of a state member bank that engage in retail insurance activities at an office of the bank or on behalf of the bank. Retail insurance activities by other types of subsidiaries that do not have the specified connection to the parent bank would be subject instead to the consumer protection requirements imposed by the functional regulator of those subsidiaries.

The Board requests comment on the burdens associated with the proposed rule and on whether there are appropriate alternative provisions would reduce the burdens on small institutions.

FDIC: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires the Agencies to either prepare an initial regulatory flexibility analysis (IRFA) with these proposed rule or certify that these proposed rules would not have a significant economic impact on a substantial number of small entities as defined in the RFA. The FDIC cannot, at this time, determine whether these proposed rules would have a significant economic impact on a substantial number of small entities as defined in the RFA.[23] Therefore, the FDIC includes the following IRFA.

Reasons for the Proposed Rules

The FDIC is requesting comments on the proposed rules published pursuant to section 47 of the FDIA, which was added by section 305 of the G–L–B Act. Section 47 requires that the Agencies jointly prescribe consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution. These requirements are expressly mandated by the G–L–B Act. It is the view of the FDIC that the G–L–B Act's requirements account for substantially all of the economic impact of the proposed rules.

Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** section above contains the information. The legal basis for the proposed regulation is the G–L–B Act.

Description/Estimate of the Small Entities to Which the Proposed Rules Would Apply

The proposed rules at 12 CFR part 343 would apply to all FDIC-insured, state-chartered banks that are not members of the Federal Reserve System (approximately 5800). The FDIC estimates that approximately 3700 of this total are ''small entities'' as defined by the RFA. In addition, the FDIC estimates that all 3700 of these small

[23] The RFA defines the term ''small entity'' in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration (SBA). The SBA has defined a ''small entity for banking purposes as a national or commercial bank, savings institution or credit union with less than $100 million in assets.'' *See* 13 CFR 121.201.

banks sell, solicit, advertise, or offer certain types of insurance products or annuities to consumers.

The FDIC does not have data concerning how many other persons sell, solicit, advertise, or offer insurance products or annuities to consumers at an office of the bank or ''on behalf of'' the bank. Similarly, the FDIC does not have data regarding how many of these other persons are small entities.

The FDIC specifically seeks comments on the number and size of savings associations and other persons that are subject to the rule.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection requirements imposed by the G–L–B Act and the proposed rules are discussed above in the section titled ''Paperwork Reduction Act.''

General Requirements

As described more fully in the supplementary material provided above, the proposed rules: (1) Contain new disclosure and consumer acknowledgment requirements; (2) prohibit coercion, tying, misrepresentations, and domestic violence discrimination; (3) require separation of deposit activities from insurance and annuity activities; (4) limit referral fees; and (5) require insurance and annuity sales personnel be appropriately qualified and licensed. The requirements of the proposed rules are mandated by section 47 of FDIA, as added by section 305 of the G–L–B Act. The proposed rules do not add to the statutory requirement in any significant way.

To minimize the compliance burdens, the proposal would:

- Not apply to subsidiaries of depository institutions, except where such subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a bank or on behalf of a bank. The FDIC is proposing this approach even though under section 47(a)(2) of FDIA, the FDIC could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.
- Take a narrow approach to defining when a person is selling, soliciting, advertising, or offering insurance products or annuities on behalf of a bank. The Agencies have, however, requested comment on an alternative approach to this issue.
- Only apply to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals*. The Agencies have, however, requested comment on an alternative approach to this issue.
- Define ''office'' narrowly only to include premises of a savings association where retail deposits are accepted from the public.
- Permit disclosures to be provided through electronic media, obviating the need for oral or paper disclosures, where the consumer agrees and if the disclosures are provided in a format that the consumer may retain or obtain later.
- Remove impediments to telephone sales, solicitations, advertisements, and offers by permitting covered persons to provide disclosures orally by telephone and then timely follow up with written or electronic disclosures.
- Provide flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Permit consumers to use electronic media to acknowledge their receipt of disclosures.
- Not require disclosures in advertisements of a general nature describing or listing the services or products offered by the bank.

Many banks and other persons may already be partly or fully prepared to meet the requirements of these proposed rules. As discussed below, many of the requirements such as those on disclosure, consumer acknowledgments, physical separation of deposit activities from nondeposit activities, training of sales personnel, and limitations on referral fees are similar to existing standards applicable to banks and others who offer or sell nondeposit investment products. Compliance with other requirements, such as the prohibition on domestic violence discrimination, will call for similar types of resources as are used to comply with other existing nondiscrimination statutes such as the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f, and the Fair Housing Act, 42 U.S.C. 3601 *et seq.* Covered persons may need to provide further training or additional personnel, including personnel skilled in clerical, computer, compliance, and legal matters.

The FDIC does not have a practicable or reliable basis for quantifying the costs of these proposed rules, or of any alternatives to the proposed rules. While the FDIC does not believe that the proposed rules would be burdensome, it is uncertain what the economic impact of compliance with the new requirements would be or how many persons would be subject to the rule. Rather than merely guess at the regulatory burden of these proposed rules, the FDIC solicits comment on these burdens and on ways to minimize the burdens, consistent with the G–L–B Act.

Identification of Duplicative, Overlapping, or Conflicting Federal Rules

While the scope of the proposed regulation implementing section 47 of FDIA is unique, there is some overlap with certain prior guidance and Federal statutes and rules. As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (''Interagency Statement''), the term ''nondeposit investment products,'' includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not issued by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited.

Other federal authorities that overlap with the proposed rules include the statutory prohibition on tying arrangements in section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972). State consumer protection rules also may apply to sales, solicitations, advertisements, and offers of insurance products or annuities.

The proposed rules do not appear to conflict materially with the Interagency Statement or these other authorities. The FDIC seeks comment on any other Federal or State requirements that may duplicate, overlap, or conflict with the proposal.

Discussion of Significant Alternatives

The requirements in the proposed rules parallel those in section 47 of FDIA. The proposed rules would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements. Since the requirements are set by statute, OTS has

only limited discretion to consider alternatives. To the extent that the FDIC does have discretion, it has exercised that discretion to minimize the burden as discussed above.

Congress has decided that ''any depository institution'' and ''any person'' that is engaged in retail sales, solicitations, advertising, or offers of insurance products (or annuities) must comply. The G–L–B Act does not expressly authorize the FDIC to exempt small banks, affiliates, or persons from these requirements. The FDIC does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

• Providing a more expansive definition of ''electronic media'' to provide even more flexibility in meeting the disclosure and consumer acknowledgment requirements.

• Making revisions to ensure that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.

• Defining the term ''insurance'' in ways that could narrow or clarify the scope of the rule.

The FDIC requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

OTS: The Regulatory Flexibility Act requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. OTS cannot, at this time, determine whether these proposed rules would have a significant economic impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.

A description of the reasons why OTS is considering this action and a statement of the objectives of, and legal basis for, these proposed rules, are contained in the supplementary materials provided above.

1. Small Entities to Which the Proposed Rules Would Apply

The proposed rules would apply to savings associations and any other persons who, at an office of a savings association or on behalf of a savings association, sell, solicit, advertise, or offer insurance products or annuities to consumers. The proposed rules would apply regardless of the size of the savings association or other person.

OTS calculates that of the approximately 1,097 savings associations, a maximum of 482 are small savings associations. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million. 13 CFR 121.201, Division H (1999). OTS estimates that all of the small savings associations sell, solicit, advertise, or offer insurance products or annuities to consumers.

OTS does not have data on how many other persons sell, solicit, advertise, or offer insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association. OTS does not have data on how many of these other persons are small entities.

OTS specifically seeks comment on the number and size of savings associations and other persons that are subject to the rule.

2. Requirements of the Proposed Rules

As described more fully in the supplementary material provided above, the proposed rules: (1) Contain new disclosure and consumer acknowledgment requirements; (2) prohibit coercion, tying, misrepresentations, and domestic violence discrimination; (3) require separation of deposit activities from insurance and annuity activities; (4) limit referral fees; and (5) require insurance and annuity sales personnel be appropriately qualified and licensed. The requirements of the proposed rules are mandated by section 47 of FDIA, as added by section 305 of the G–L–B Act. The proposed rules do not add to the statutory requirement in any significant way.

To minimize the compliance burdens, the proposal would:

• Not apply to subsidiaries of depository institutions, except where such subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association. OTS is proposing this approach even though under section 47(a)(2) of FDIA OTS could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.

• Take a narrow approach to defining when a person is selling, soliciting, advertising, or offering insurance products or annuities on behalf of a savings association. The Agencies have, however, requested comment on an alternative approach to this issue.

• Only apply to retail sales, solicitations, advertisements, or offers of insurance products or annuities to individuals. The Agencies have, however, requested comment on an alternative approach to this issue.

• Define ''office'' narrowly only to include premises of a savings association where retail deposits are accepted from the public.

• Permit disclosures to be provided through electronic media, obviating the need for oral or paper disclosures, where the consumer affirmatively consents and if the disclosures are provided in a format that the consumer may retain or obtain later.

• Remove impediments to telephone sales, solicitations, advertisements, and offers by permitting covered persons to provide certain disclosures orally by telephone and then timely follow up with written or electronic disclosures.

• Provide flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.

• Permit consumers to use electronic media to acknowledge their receipt of disclosures.

• Not require disclosures in advertisements of a general nature describing or listing the services or products offered by the savings association.

Many savings associations and other persons may already be partly or fully prepared to meet the requirements of these proposed rules. As discussed below, many of the requirements such as those on disclosure, consumer acknowledgments, physical separation of deposit activities from nondeposit activities, training of sales personnel, and limitations on referral fees are similar to existing standards applicable to savings associations and others who offer or sell nondeposit investment products. Persons selling, soliciting, advertising, or offering insurance products or annuities may have to revise printed materials and modify Internet web sites. Compliance with other requirements, such as the prohibition on domestic violence discrimination, will call for similar types of resources as are used to comply with other existing nondiscrimination statutes such as the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f, and the Fair Housing Act, 42 U.S.C. 3601 *et seq*. Covered persons may need to provide further training or additional personnel, including personnel skilled in clerical, computer, compliance, and legal matters.

OTS does not have a practicable or reliable basis for quantifying the costs of these proposed rules, or of any

alternatives to the rule. While OTS does not believe that the rule would be burdensome, it is uncertain what the economic impact of compliance with the new requirements would be or how many persons would be subject to the rule. Rather than merely guess at the regulatory burden of these proposed rules, OTS solicits comment on these burdens and on ways to minimize the burdens, consistent with the G–L–B Act.

3. Significant Alternatives

The requirements in the proposed rules parallel those in section 47 of FDIA. The proposed rules would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements. Since the requirements are set by statute, OTS has only limited discretion to consider alternatives. To the extent that OTS does have discretion, it has exercised that discretion to minimize the burden as discussed in section 2 above.

Congress has decided that ''any depository institution'' and ''any person'' that is engaged in retail sales, solicitations, advertising, or offers of insurance products (or annuities) must comply. The G–L–B Act does not expressly authorize OTS to exempt small savings associations, affiliates, or persons from these requirements. OTS does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

- Providing a more expansive definition of ''electronic media'' to provide even more flexibility in meeting the disclosure and consumer acknowledgment requirements.
- Making revisions to ensure that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.
- Defining the term ''insurance'' in ways that could narrow or clarify the scope of the rule.

OTS requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

4. Other Matters

While the scope of the proposed regulation implementing section 47 of FDIA is unique, there is some overlap with certain prior guidance and Federal statutes and rules. As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (''Interagency Statement''), the term ''nondeposit investment products,'' includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited.

Other federal authorities that overlap with the proposed rules include the statutory prohibition on tying arrangements in section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), and OTS's regulation prohibiting advertising that is inaccurate or makes misrepresentations (12 CFR 563.27). State consumer protection rules also may apply to sales, solicitations, advertisements, and offers of insurance products or annuities.

The proposed rules do not appear to conflict materially with the Interagency Statement or these other authorities. OTS seeks comment on any other Federal or State requirements that may duplicate, overlap, or conflict with the proposal.

C. Executive Order 12866

OCC: The Comptroller of the Currency has determined that these proposed rules, if adopted as a final rule, would not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866. While the OCC's cost estimates are necessarily imprecise because the requirements included in the proposal result from new legislation, under the most conservative cost scenarios that the OCC can develop on the basis of available information, the impact of the proposal falls well short of the thresholds established by the Executive Order.

OTS: OTS has determined that these proposed rules, if adopted as a final rule, would not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866. The rule follows closely the requirements of section 305 of the G–L–B Act. Since the G–L–B Act establishes the minimum requirements for this activity, OTS has little discretion to propose regulatory options that might significantly reduce costs or other burdens.

Nevertheless, OTS acknowledges that the rule would impose costs on covered persons by requiring them to make disclosures and obtain consumer acknowledgments of those disclosures. While OTS does not believe that the impact of the rule would meet the thresholds of the Executive Order, OTS invites the thrift industry and the public to provide any cost estimates and related data that they think would be useful to the agency in evaluating the overall costs of the rule. OTS will review carefully the comments and cost data that you provide and will revisit the cost aspects of the G–L–B Act as implemented by this proposal in developing the final rule.

D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. However, an agency is not required to assess the effects of its regulatory actions on the private sector to the extent that such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Most of the proposed rules' provisions are already mandated by the applicable provisions in section 305 of the G–L–B Act, which would become effective and binding on the private sector without a regulatory promulgation. Therefore, the OCC and OTS have determined that this proposed regulation will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. Executive Order 13132—Federalism

OCC: Executive Order 13132 imposes certain requirements when an agency issues a regulation that has federalism implications or that preempts State law.

Under the Executive Order, a regulation has federalism implications if it has 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. In general, the Executive Order requires the agency to adhere strictly to federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

In the OCC's opinion, it is not clear that Executive Order 13132 applies to the OCC's rules implementing section 305 of the G–L–B Act because the statute itself directs most of the significant policy choices that the Agencies have made—that is, the statute expressly prescribes both the substantive content and the preemptive effect of the rules. Moreover, the effect of the language of the express preemption provision in section 305 is to preserve State laws, subject to certain exceptions, rather than to preempt them. Under that provision, the insurance customer protections in the Agencies' rules generally will *not* have preemptive effect in a State where the State has in effect statutes, rules, regulations, orders, or interpretations that are inconsistent with or contrary to the regulations prescribed by the Agencies unless a provision in the Agencies' rules affords greater protection to customers than is afforded by a comparable State law. Section 305 prescribes a process for the Agencies to use in order to determine jointly whether a provision in the Agencies' regulations satisfies this ''greater protection'' standard. If the Agencies make that joint determination, and provide written notice to the affected State that its law is preempted, then that provision of State law will be preempted unless, within 3 years after the date that the Agencies issue the written notice, the State adopts legislation that overrides the preemption.

Elsewhere in the Supplementary Information, the OCC and the other Agencies have asked for comment on the best way to administer these provisions in order to reduce uncertainty on the part of the institutions we supervise about whether federal or State standards apply. Regardless of how the Agencies address this practical issue, however, the federalism implications and the preemptive effect of the OCC's rules implementing section 305 depend, in the first instance, on how the Agencies' final rules compare with a particular State's laws and, ultimately, on whether a State adopts the ''opt-out'' legislation that section 305 permits.

Nonetheless, the OCC plans for its final rules to satisfy the requirements of the Executive Order. If an agency promulgates a regulation that has federalism implications and preempts State law, the Executive Order imposes upon the agency requirements to consult with State and local officials; to publish a ''federalism summary impact statement,'' and to make written comments from State and local officials available to the Director of the Office of Management and Budget (OMB).

Separately, section 305 requires the Agencies to consult with State insurance regulators before issuing final implementing regulations. As described elsewhere in the Supplementary Information, the OCC and the other Agencies have consulted with the NAIC and provided them with an advance copy of the proposal. The OCC has provided an advance copy of the proposal to the Conference of State Bank Supervisors. The OCC will include in the preamble to the final rules a federalism summary impact statement that comports with the requirements of the Executive Order, and we will make any written comments we receive from State or local officials available to the Director of OMB.

OTS: Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that will 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, or taking actions that preempt state law. Section 47(g) of FDIA, 12 U.S.C. 1831x, as added by section 305 of the G–L–B Act, provides that the insurance consumer protections in the Agencies' rules generally will *not* apply to retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any savings association or any person that is engaged in such activities at an office of the savings association or on behalf of the savings association in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the federal regulations. However, if the federal regulations afford greater protection for insurance consumers than a comparable State law, rule, regulation, order, or interpretation, the State provision may be preempted in accordance with certain specified procedures.

OTS has determined that application of these statutorily-mandated provisions, through its proposed rule, will have federalism implications and may result in the preemption of state law. Section 47(a) of FDIA obligates OTS to issue this regulation to implement section 305 of the G–L–B Act, which includes section 47(g) of FDIA. Consistent with section 47(a)(3) of FDIA and section 6(c) of Executive Order 13132, the Agencies have consulted with the National Association of Insurance Commissioners (NAIC), as indicated in the Supplementary Information above. The Agencies provided an advance copy of the proposed rule to the NAIC and the NAIC commented that the rule should expressly acknowledge the applicability of state insurance requirements to banks and savings associations offering or selling insurance. In response, the Agencies have indicated in the preamble that State consumer protection rules also may apply to bank and savings association insurance sales. OTS has also provided a copy of the proposed rule to the Conference of State Bank Supervisors. OTS invites comment on the federalism and preemption issues implicated by this proposed rule.

Solicitation of Comments on Use of ''Plain Language''

Section 722 of the G–L–B Act requires the Federal banking Agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. We invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Does the rule contain technical language or jargon that isn't clear? If not, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- Would more (but shorter) sections be better? If so, which sections should be changed?
- What else could we do to make the rule easier to understand?

OCC Comment Solicitation on Impact on Community Banks

The OCC also seeks comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

List of Subjects

12 CFR Part 14

Banks, banking; Insurance consumer protection; National banks.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Insurance consumer protection, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 343

Banks, banking; Insurance consumer protection.

12 CFR Part 536

Consumer protection, Insurance, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations by adding a new part 14 to read as follows:

PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

14.10 Purpose and scope.
14.20 Definitions.
14.30 Prohibited practices.
14.40 What a covered person must disclose.
14.50 Where insurance activities may take place.
14.60 Qualification and licensing requirements for insurance sales personnel.
Appendix to Part 14—Consumer Grievance Process.

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 92, 93a, 1818, and 1831x.

§ 14.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any national bank or by any person that is engaged in such activities at an office of the national bank or on behalf of the bank. For purposes of this part, the terms ''national bank'' or ''bank'' includes a Federal Branch or agency of a foreign bank as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101, *et seq.*) For purposes of § 5.34(e)(3) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a national bank or on behalf of a national bank.

§ 14.20 Definitions.

As used in this part:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(c) *Consumer* means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person.

(d) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(e) *Covered person* means a national bank or Federal branch or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the national bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a national bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the national bank;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

(f) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(g) *Electronic media* includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(h) *Office* means the premises of a national bank where retail deposits are accepted from the public.

(i) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

§ 14.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the national bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the

consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* A covered person may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

§ 14.40 What a covered person must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the national bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the national bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The national bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If a covered person takes an application for such credit by telephone, the covered person may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, a covered person may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, a covered person is not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- Not a Deposit
- Not FDIC-Insured
- Not Insured by any Federal Government Agency
- Not Guaranteed by the Bank
- May Go Down in Value

(4) *Disclosures must be meaningful.* (i) A covered person must provide the disclosures required by paragraph (a) of this section in a meaningful form. A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required. A covered person provides the disclosures in a meaningful form if the covered person provides the disclosures in printed form and orally discloses the information to the consumer, or if the covered person provides the disclosures through electronic media under paragraph (b)(2) of this section and complies with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the national bank.

§ 14.50 Where insurance activities may take place.

(a) *General rule.* A national bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the

areas where the national bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 14.60 Qualification and licensing requirements for insurance sales personnel.

A national bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix to Part 14—Consumer Grievance Process

Any consumer who believes that any national bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the national bank or on behalf of the bank has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency at the following address: 1301 McKinney Street, Suite 3710, Houston, Texas 77010–3031.

Dated: August 14, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board proposes to amend part 208, chapter II, title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is proposed to be revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. The existing subpart H—Interpretations is proposed to be redesignated as subpart I.

3. A new subpart H is proposed to be added to read as follows:

Subpart H—Consumer Protection in Sales of Insurance

Sec.

208.81 Purpose and scope.
208.82 Definitions for purposes of this subpart.
208.83 Prohibited practices.
208.84 What you must disclose.
208.85 Where insurance activities may take place.
208.86 Qualification and licensing requirements for insurance sales personnel.
Appendix to Subpart H—Consumer Grievance Process.

§ 208.81 Purpose and scope.

This subpart establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any state member bank or by any person that is engaged in such activities at an office of the state member bank or on behalf of the bank.

§ 208.82 Definitions for purposes of this subpart.

As used in this subpart:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(c) *Consumer* means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from you.

(d) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(e) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(f) *Electronic media* includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(g) *Office* means the premises of a state member bank where retail deposits are accepted from the public.

(h) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

(i) *You* means a state member bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the state member bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a state member bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the state member bank;

(2) The state member bank receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

§ 208.83 Prohibited practices.

(a) *Anticoercion and antitying rules.* You may not engage in any practice that

would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the state member bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by you or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

§ 208.84 What you must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the state member bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the state member bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The state member bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which insurance will be solicited, offered, or sold. If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided you mail it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, you may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, you are not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- Not a Deposit
- Not FDIC-Insured
- Not Insured by any Federal Government Agency
- Not Guaranteed by the Bank
- May Go Down in Value

(4) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraph (a) of this section in a meaningful form. You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but you do not provide the printed material when required and do not orally disclose the information to the consumer when required. You provide the disclosures in a meaningful form if you provide the disclosures in printed form and orally disclose the information to the consumer, or if you provide the disclosures through electronic media under paragraph (b)(2) of this section and comply with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the state member bank.

§ 208.85 Where insurance activities may take place.

(a) *General rule.* A state member bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate

and distinguish those areas from the areas where the state member bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 208.86 Qualification and licensing requirements for insurance sales personnel.

A state member bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix to Subpart H—Consumer Grievance Process

Any consumer who believes that any state member bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the state member bank or on behalf of the bank has violated the requirements of this subpart should contact the Consumer Complaints Section, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System at the following address: 20th & C Streets, NW, Washington, DC 20551.

By order of the Board of Governors of the Federal Reserve System, August 15, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations by adding a new part 343 to read as follows:

PART 343—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

343.10 Purpose and scope.
343.20 Definitions.
343.30 Prohibited practices.
343.40 What a covered person must disclose.
343.50 Where insurance activities may take place.
343.60 Qualification and licensing requirements for insurance sales personnel.
Appendix to Part 343—Consumer Grievance Process.

Authority: 12 U.S.C. 1819 (Seventh and Tenth); 12 U.S.C. 1831x.

§ 343.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any bank or by any person that is engaged in such activities at an office of the bank or on behalf of the bank.

§ 343.20 Definitions.

As used in this part:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Bank* means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(c) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any state, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person.

(e) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(f) *Covered person or you* means a bank, as defined in paragraph (b) of this section, or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the bank;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

(g) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(h) *Electronic media* includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(i) *Office* means the premises of a bank where retail deposits are accepted from the public.

(j) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

§ 343.30 Prohibited practices.

(a) *Anticoercion and anti-tying rules.* A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank is not backed by the federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* A covered person may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under state law.

§ 343.40 What a covered person must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If a covered person takes an application for such credit by telephone, the covered person may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, a covered person may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, a covered person is not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- Not a Deposit
- Not FDIC-Insured
- Not Insured by any Federal Government Agency
- Not Guaranteed By the Bank [or Savings Association]
- May Go Down in Value

(4) *Disclosures must be meaningful.* (i) A covered person must provide the disclosures required by paragraph (a) of this section in a meaningful form. A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required. A covered person provides the disclosures in a meaningful form if the covered person provides the disclosures in printed form and orally discloses the information to the consumer, or if the covered person provides the disclosures through electronic media under paragraph (b)(2) of this section and complies with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the bank.

§ 343.50 Where insurance activities may take place.

(a) *General rule.* A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and

distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 343.60 Qualification and licensing requirements for insurance sales personnel.

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable state insurance licensing standards with regard to the specific products being sold or recommended.

Appendix to Part 343—Consumer Grievance Process

Any consumer who believes that any bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or on behalf of the bank has violated the requirements of part 343 should contact the Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation, at the following address: 550 17th Street, NW., Washington, DC 20429, or telephone 202–942–3100 or 800–934–3342, or e-mail *dcainternet@fdic.gov.*

Dated at Washington, DC, this 14th day of August, 2000.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, OTS proposes to amend chapter V of title 12 of the Code of Federal Regulations by adding a new part 536 to read as follows:

PART 536—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

536.10 Purpose and scope.
536.20 Definitions.
536.30 Prohibited practices.
536.40 What you must disclose.
536.50 Where insurance activities may take place.
536.60 Qualification and licensing requirements for insurance sales personnel.
Appendix To Part 536—Consumer Grievance Process

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831x.

§ 536.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any savings association or by any person that is engaged in such activities at an office of a savings association or on behalf of a savings association. For purposes of § 559.3(h) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a savings association or on behalf of a savings association.

§ 536.20 Definitions.

As used in this part:

Affiliate means a company that controls, is controlled by, or is under common control with another company.

Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

Consumer means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from you.

Control of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(w)(5)).

Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

Electronic media includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

Office means the premises of a savings association where retail deposits are accepted from the public.

Subsidiary has the same meaning as in section 3(w)(4) of the FDIA (12 U.S.C. 1813(w)(4)).

You means a savings association, as defined in § 561.43 of this chapter, or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of a savings association, or on behalf of a savings association. For purposes of this definition, activities on behalf of a savings association include activities where a person, whether at an office of a savings association or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of a savings association;

(2) A savings association receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the savings association or its affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to a savings association or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to a savings association or uses its corporate logo or corporate name.

§ 536.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* As provided in section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), you may not engage in any practice that would lead a consumer to believe that an extension of credit is conditional upon either:

(1) The purchase of an insurance product or annuity from a savings association or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the

consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, a savings association or a subsidiary of a savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by you or any subsidiary of a savings association is not backed by the Federal government or a savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a savings association or subsidiary of a savings association at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the savings association or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the savings association or a subsidiary of the savings association; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

§ 536.40 What you must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, a savings association or (if applicable) an affiliate of a savings association;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, a savings association, or (if applicable) an affiliate of a savings association;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) A savings association may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from a savings association or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) You must provide the disclosures required by paragraph (a) of this section orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) You must also provide the disclosure required by paragraph (a)(4) of this section orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided you mail it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, you may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, you are not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

(i) Not a Deposit

(ii) Not FDIC-Insured

(iii) Not Insured by any Federal Government Agency

(iv) Not Guaranteed by the Savings Association

(v) May Go Down in Value

(4) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraph (a) of this section in a meaningful form. You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but you do not provide the printed material when required and do not orally disclose the information to the consumer when required. You provide the disclosures in a meaningful form if you provide the disclosures in printed form and orally disclose the information to the consumer, or if you provide the disclosures through electronic media under paragraph (b)(2) of this section and comply with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which you are not required to provide paper or oral disclosures, you have not meaningfully provided the disclosures if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the savings association.

§ 536.50 Where insurance activities may take place.

(a) *General rule.* A savings association must, to the extent practicable, keep the area where the savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the savings

association's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a savings association may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 536.60 Qualification and licensing requirements for insurance sales personnel.

A savings association may not permit any person to sell or offer for sale any insurance product or annuity in any part of the savings association's office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix to Part 536—Consumer Grievance Process

Any consumer who believes that any savings association or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the savings association or on behalf of a savings association has violated the requirements of this part should contact the Director, Consumer Programs, Office of Thrift Supervision, at the following address: 1700 G Street, NW, Washington, DC 20552, or telephone 202–906–6237 or 800–842–6929, or e-mail consumer.complaints@ots.treas.gov.

Dated: August 4, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–21216 Filed 8–18–00; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

Federal Register

Monday,
August 21, 2000

Part VIII

Department of Housing and Urban Development

24 CFR Part 2003
Implementation of the Privacy Act of 1974; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2003

[Docket No. FR–4575–F–03]

RIN 2508–AA11

Implementation of the Privacy Act of 1974

AGENCY: Office of Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Office of Inspector General (OIG) that implement the Privacy Act of 1974 to conform these regulations to the OIG's notice, published on May 22, 2000, that added two new systems of records to the four systems of records already in existence. This final rule follows publication of a proposed rule and the May 22, 2000 notice, both of which solicited public comments. No public comments were received on either the rule or notice.

DATES: *Effective Date:* September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Acting Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The Inspector General Act of 1978 (5 U.S.C. App. 3) was enacted to create independent and objective units to perform various investigative and monitoring functions in several Executive Agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). This Act confers broad authority upon the Inspector General to conduct independent investigations, audits, and other activities. Consistent with its statutory independence, the OIG of HUD adopted separate regulations at 24 CFR Chapter XII. Chapter XII is applicable to such OIG matters as availability of information to the public (part 2002) and production of information in response to subpoenas or demands of courts or other authorities (part 2004). *See* 57 FR 2225, January 21, 1992.

In June 1992, the Inspector General of HUD also adopted part 2003 of Chapter XII, for the purpose of implementing the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) with respect to OIG records. Part 2003 generally incorporated the Department's existing Privacy Act regulations (24 CFR part 16), but also contained a series of general and specific exemptions for three of OIG's four existing systems of records.

This final rule amends these regulations consistent with the OIG notice, published in the **Federal Register** on May 22, 2000 (65 FR 33242), that added two new systems of records to the four systems of records already in existence. This final rule follows publication of a May 22, 2000 proposed rule and the May 22, 2000 notice, both of which solicited public comments. No public comments were received either on the proposed rule or the notice. This final rule makes no changes to the proposed rule.

The notice took effect on June 21, 2000.

Findings and Certifications

Environmental Review

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish , revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Regulatory Flexibility Act

This rule would not create a significant economic impact on a substantial number of small entities. This rule is limited to making conforming amendments to existing regulations.

Executive Order 13132, Federalism

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

List of Subjects in 24 CFR Part 2003

Privacy.

Accordingly, 24 CFR chapter XII, part 2003, is amended to read as follows:

PART 2003—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 2003 is revised to read as follows:

Authority: 5 U.S.C. 552a; 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d).

2. In § 2003.8, the introductory text of paragraph (a) is revised to read as follows:

§ 2003.8 General Exemptions.

(a) The systems of records entitled ''Investigative Files of the Office of Inspector General,'' ''Hotline Complaint Files of the Office of Inspector General,'' ''Name Indices System of the Office of Inspector General,'' and ''AutoInvestigation of the Office of Inspector General'' consist, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in these systems falls within the scope of exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated in paragraphs (a)(1) through (6) of this section.

* * * * *

3. In § 2003.9, the introductory text of paragraph (a) is revised, and paragraph (b) is revised, to read as follows:

§ 2003.9 Specific Exemptions.

(a) The systems of records entitled ''Investigative Files of the Office of Inspector General,'' ''Hotline Complaint Files of the Office of Inspector General,'' ''Name Indices System of the Office of Inspector General,'' and ''AutoInvestigation of the Office of Inspector General'' consist, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated in paragraphs (a) (1) through (4) of this section.

* * * * *

(b) The systems of records entitled ''Investigative Files of the Office of Inspector General,'' ''Hotline Complaint Files of the Office of Inspector General,'' ''Name Indices System of the Office of Inspector General,'' and ''Autoinvestigation of the Office of Inspector General'' consist in part of investigatory material compiled by the OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems fall within the coverage of exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are exempt from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: August 7, 2000.

Susan Gaffney,

Inspector General.

[FR Doc. 00–21218 Filed 8–18–00; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 1629/P.L. 106–257

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

S. 1910/P.L. 106–258

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

H.R. 4576/P.L. 106–259

Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
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700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
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CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.