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Contents

Federal Register

Vol. 65, No. 239

Tuesday, December 12, 2000

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agriculture Department
See Commodity Credit Corporation
See Forest Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Provincial Advisory Committees, 77554–77555

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
RULES
Child support enforcement program:
State self-assessment review and report, 77741–77753

Coast Guard
RULES
Regattas and marine parades:
BellSouth Winterfest Boat Parade, 77513–77515
Wyndham New Years Fireworks display, 77512–77513

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 77592
Dominican Republic, 77592–77593
Oman, 77593
Romania, 77594

Commodity Credit Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77555
Tobacco, flue-cured; price support differentials; change; comment request, 77555–77557

Commodity Futures Trading Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77595

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
National Service-Learning Clearinghouse, 77595–77600

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77600–77602
Grants and cooperative agreements; availability, etc.:
Postsecondary Education Improvement Fund, 77602–77604

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Worker Advocacy Advisory Committee, 77604
Grants and cooperative agreements; availability; etc.:
Advanced Coal Research Support at U.S. Colleges and Universities, 77604–77607
Energy Efficient Building Equipment and Envelop Technologies, Round III, 77607–77608
Meetings:
Secretary of Energy Advisory Board; correction, 77608

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
New Jersey; correction, 77695
Air quality planning purposes; designation of areas:
Washington, 77544–77545
NOTICES
Air quality; prevention of significant deterioration (PSD):
Determinations—
Detroit Edison Company's Monroe Power Plant, 77623–77624
Meetings:
Environmental Policy and Technology National Advisory Council, 77624
Pesticide programs:
Organophosphates; risk assessments and public participation in risk management—
Malathion, 77624–77626
Reports and guidance documents; availability, etc.:
Environmental Risks to Children; Research Strategy, 77626
Superfund; response and remedial actions, proposed settlements, etc.:
Carrier Air Conditioning Co. Site, TN, 77626
Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 77627–77630

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Class E airspace, 77497
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney, 77530–77532

Rolls-Royce Corp., 77528–77530

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Competitive local exchange carriers access charge reform; rural exemption to benchmarked rates, 77545–77546

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 77630

Federal Emergency Management Agency
NOTICES
Meetings:
National Fire Academy Board of Visitors, 77630

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 77622–77623
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 77608
ANR Pipeline Co., 77608–77609
California Independent System Operator Corp., 77609–77610
Colorado Interstate Gas Co., 77610
Columbia Gas Transmission Corp., 77610–77611
Dominion Transmission, Inc., 77611
Duke Energy McClain, LLC, 77611–77612
East Tennessee Natural Gas Co., 77612
Equitrans, L.P., 77612–77613
Kinder Morgan Interstate Gas Transmission LLC, 77613–77614
Midwestern Gas Transmission Co., 77614
Mojave Pipeline Co., 77614
National Fuel Gas Supply Corp., 77614–77615
Northern Border Pipeline Co., 77615–77616
Northern Natural Gas Co., 77616
Northwest Pipeline Corp., 77616–77617
Panhandle Eastern Pipe Line Co., 77617
PG&E Gas Transmission, Northwest Corp., 77617–77618
Questar Pipeline Co., 77618
SEI Michigan, L.L.C., 77618–77619
Tennessee Gas Pipeline Co., 77619
Texas Eastern Transmission Corp., 77619–77620
Transcontinental Gas Pipe Line Corp., 77620–77621
Trans-Union Interstate Pipeline, L.P., 77620
Transwestern Pipeline Co., 77621
Trunkline Gas Co., 77621–77622
Williams Gas Pipelines Central, Inc., 77622
Williston Basin Interstate Pipeline Co., 77622

Federal Highway Administration
PROPOSED RULES
Transportation operations and management:
Dedicated short range communications in intelligent transportation systems commercial vehicle operations, 77534–77538
NOTICES
Environmental statements; notice of intent:
Dallas County, TX, 77689
Meetings:
Intelligent Transportation Society of America, 77689–77690

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 77630–77631

Fish and Wildlife Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77661–77664

Food and Drug Administration
RULES
Biological products:
Licensed anti-human globulin and blood grouping reagents; requirements, 77497–77499
PROPOSED RULES
Biological products:
Licensed anti-human globulin and blood grouping reagents; requirements, 77532–77534
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77633–77635
Reporting and recordkeeping requirements, 77635–77636
Meetings:
Advisory committees; tentative schedule, 77636–77639
Memorandums of understanding:
Centers for Disease Control and Prevention; coordination and collaborative efforts and information exchanges, 77639–77650

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida
Coastal Fuels Marketing, Inc.; petroleum products storage facility, 77558
Massachusetts
AstraZeneca LP; pharmaceutical products manufacturing plant, 77560
Texas
ISP Technologies Inc.; chemical plant facilities, 77559–77560

Forest Service
NOTICES
Environmental statements; notice of intent:
Sierra National Forest, CA, 77557–77558

General Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77631

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Genetic Testing Advisory Committee, 77631–77633

Historic Preservation, Advisory Council
RULES
Protection of historic and cultural properties, 77697–77739

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77660
Organization, functions, and authority delegations:
Acting Secretary; order of succession, 77660–77661

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77694

International Trade Administration
NOTICES
Antidumping:
Circular welded non-alloy steel pipe from—
Mexico, 77560–77564
Corrosion-resistant carbon steel flat products from—
Japan, 77564–77566
Cut-to-length carbon steel plate from—
Mexico, 77566–77567
Elemental sulphur from—
Canada, 77567–77568
Hot-rolled carbon steel flat products from—
Various countries, 77568–77578
Stainless steel sheet and strip in coils from—
Japan, 77578–77579
Countervailing duties:
Hot-rolled carbon steel flat products from—
Various countries, 77580–77584

International Trade Commission
NOTICES
Import investigations:
U.S.-Singapore Free Trade Agreement; potential trade and economic effects, 77672

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 77554

Labor Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77672–77673

Land Management Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77664–77665
Meetings:
National Historic Oregon Trail Interpretive Center Advisory Board, 77665
Resource Advisory Councils—
Alaska, 77665

Management and Budget Office
NOTICES
Federal information resources management (Circular A-130), 77677–77687

Maritime Administration
RULES
Practice and procedure:
Operating-differential subsidy application hearings; statistical data use; CFR part removed, 77521–77523
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77690

Minerals Management Service
NOTICES
Environmental statements; notice of intent:
Outer Continental Shelf; new 5-year oil and gas leasing program (2002-2007); comment request, 77665–77670

National Aeronautics and Space Administration
NOTICES
Nondiscrimination on basis of sex in federally assisted education programs or activities; Federal financial assistance covered by Title IX, 77673–77674

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77674–77675
Meetings:
Humanities Panel, 77675
Humanities Panel; correction, 77675

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 77690–77693

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77650–77651
Inventions, Government-owned; availability for licensing, 77651–77654
Meetings:
National Institute of Mental Health, 77654–77655
National Institute of Nursing Research, 77654
Recombinant DNA molecules research:
Actions under guidelines
Proposed, 77655–77659

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic swordfish; ICCAT recommendations; implementation, 77523–77527
PROPOSED RULES
Marine mammals:
Incidental taking—
Naval activities; USS Winston S. Churchill shock testing, 77546–77553
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Oregon and Washington Fish and Wildlife Departments; salmonids, 77584–77586
Fishery conservation and management:
Atlantic coastal fisheries cooperative management—
South Carolina; shad and river herring; interstate fishery management plans, 77586
Grants and cooperative agreements; availability, etc.:
Argo Project; global ocean observations for understanding and prediction of climate variability, 77586–77590

National Park Service
PROPOSED RULES
Historic properties leasing regulations, 77538–77544

National Science Foundation
NOTICES
Meetings:
Civil and Mechanical Systems Special Emphasis Panel, 77675–77676

National Telecommunications and Information Administration
NOTICES
Meetings:
Telephone number mapping protocol, 77590–77591

Nuclear Regulatory Commission
NOTICES
Meetings:
10 CFR Part 70; standard review plan, 77676
Meetings; Sunshine Act, 77676–77677
Reports and guidance documents; availability, etc.:
Gaseous diffusion plants; recertification; standard review plan, 77677

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77591–77592

Postal Service
RULES
Domestic Mail Manual:
Sack preparation changes for periodicals nonletter-size mailing jobs that include automation flat rate and presorted rate mailings, 77515–77521

Presidential Documents
PROCLAMATIONS
Special observances
National Pearl Harbor Remembrance Day, 2000 (Proc 7385), 77495–77496

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
East Bay Municipal Utility District Supplemental Water Supply Project, CA, 77671–77672

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77687–77688

State Department
NOTICES
Art objects; importation for exhibition:
Ancient (circa. CE 224-641) Coins and History of the Zoroastrian (Pre-Islamic) Sassanian Dynasty of Iran, 77688

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
High Point, Randleman, Asheboro & Southern Railroad Co., 77693
Yadkin Railroad Co., 77693–77694

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
PROPOSED RULES
Savings and loan holding companies:
Significant transactions or activities and capital adequacy review, 77528

Trade Representative, Office of United States
NOTICES
United States-Israel Free Trade Area Implementation Act:
Qualifying industrial zones; designation, 77688–77689

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office
RULES
Balanced Budget Act of 1997; implementation:
District of Columbia retirement plans; Federal benefit payments, 77500–77512

Separate Parts In This Issue

Part II
Advisory Council on Historic Preservation, 77697–77739

Part III
Department of Health and Human Services, Administration for Children and Families, 77741–77753

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7385.....77495

12 CFR
Proposed Rules:
584.....77528

14 CFR
71.....77497
Proposed Rules:
39 (2 documents) 77528, 77530

21 CFR
660.....77497
Proposed Rules:
660.....77532

23 CFR
Proposed Rules:
945.....77534

31 CFR
29.....77500

33 CFR
100 (2 documents) 77512, 77513

36 CFR
800.....77698
Proposed Rules:
18.....77538

39 CFR
111.....77515

40 CFR
Proposed Rules:
52.....77695
81.....77544

45 CFR
308.....77742

46 CFR
207.....77521

47 CFR
Proposed Rules:
0.....77545
1.....77545
61.....77545
69.....77545

50 CFR
635.....77523
Proposed Rules:
216.....77546

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 2000

Presidential Documents

Title 3—

The President

Proclamation 7385 of December 6, 2000

National Pearl Harbor Remembrance Day, 2000

By the President of the United States of America

A Proclamation

While the bitter winds of war raged across much of the world on the morning of December 7, 1941, the United States was still at peace. At Pearl Harbor, the 130 vessels of the U.S. Pacific Fleet lay tranquil in the Sunday silence. Then, at 7:55 a.m., that silence was shattered by the sound of falling bombs and the rattle of machine-gun fire, as the war came home to America.

In making such a devastating preemptive strike, the forces of Imperial Japan sought to weaken our national spirit and cripple our military might. But our attackers would soon learn that they had seriously misjudged the character of the American people and the strength of our democracy. Though 21 ships were sunk or badly damaged, 347 aircraft destroyed or in need of significant repair, and some 3,500 Americans dead or injured, the attack on Pearl Harbor galvanized our Nation into action, reaffirmed our commitment to freedom, and strengthened our resolve to prevail.

Following the attack on Pearl Harbor, millions of Americans volunteered to serve in the Armed Forces. Millions of others filled factories and shipyards as the great industrial engine of our free enterprise system was harnessed to produce the planes, tanks, ships, and guns that armed the forces of freedom. Many of the ships sunk during the attack on Pearl Harbor were raised and repaired to sail once again with the U.S. Pacific Fleet—the same fleet that in September of 1945 would witness the surrender of Imperial Japan.

On Veterans Day this year, America celebrated the groundbreaking for a memorial in our Nation's capital dedicated to our World War II veterans. This memorial will stand as a testament to the countless brave Americans who responded to the attack on Pearl Harbor and the threat to our freedom by answering the call to service; both at home and overseas. It will also stand as testament to the spirit of a Nation that believes profoundly in the ideals upon which it was founded, and it will serve as an enduring reminder of what Americans can accomplish when we work together to achieve our common goals.

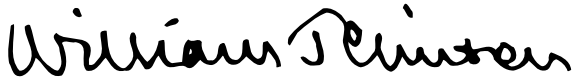
The outpouring of support for this memorial, from young and old alike, shows that the American people's deep conviction in our Nation's values has not diminished in the intervening years. We will never forget the men and women who took up arms in the greatest struggle humanity has ever known; nor will we forget the lessons they taught us: that we must remain ever vigilant, determined, and ready to advance the cause of freedom whenever and wherever it is threatened.

The Congress, by Public Law 103–308, has designated December 7, 2000, as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 2000, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations,

and individuals to fly the flag of the United States at half- staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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Rules and Regulations

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 2000

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–26]

Amendment to Class E Airspace; Pella, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Pella, IA.

DATE: The direct final rule published at 65 FR 46240 is effective on 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 18, 2000 (65 FR 56240). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 25, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 30, 2000.

N.J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–31645 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 00N–1586]

Revision to Requirements for Licensed Anti-Human Globulin and Blood Grouping Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations applicable to microbiological controls for licensed Anti-Human Globulin (AHG) and Blood Grouping Reagents (BGR). FDA is amending the regulations to remove the requirements that the products be sterile. FDA is publishing this direct final rule because the requirement that these products be sterile is not necessary for the products to be safe, pure, and potent. FDA is issuing these amendments directly as a final rule because they are noncontroversial and there is little likelihood that FDA will receive any significant comments opposing the rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule under FDA's usual procedures for notice and comment in the event the agency receives any significant adverse comments. If FDA receives any significant adverse comment that warrants terminating the direct final rule, FDA will consider such comments on the proposed rule in developing the final rule.

DATES: This rule is effective June 11, 2001. Submit written comments on or before February 26, 2001. If FDA receives no significant adverse comments during the specified comment period, the agency intends to publish a confirmation document on or before the effective date of this direct final rule confirming that the direct final rule will go into effect on June 11, 2001. If the agency receives any significant adverse comment during the comment period, FDA intends to withdraw this direct final rule by publication in the **Federal Register** before the effective date of this direct final rule.

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

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

AHG and BGR are used primarily for testing human blood for the detection of red cell antigens and antibodies. As defined in 21 CFR 660.20, BGR is a product that comes from blood, plasma, serum, or protein-rich fluids and consists of an antibody-containing fluid containing one or more of the blood grouping antibodies listed in 21 CFR 660.28(d).

Under 21 CFR 660.50, AHG is a serum or protein-rich fluid that consists of one or more antiglobulin antibodies identified in 21 CFR 660.55(d). AHG and BGR are biological products as defined in section 351 of the Public Health Service Act (PHS ACT) (42 U.S.C 262). These products are also devices, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321), and fall within the definition of in vitro diagnostic (IVD's) products in § 809.3(a) (21 CFR 809.3(a)).

AHG and BGR must meet the licensing requirements of section 351 of the PHS Act and the regulations in parts 600 through 660 (21 CFR parts 600 through 660). Section 351 of the PHS Act, requires that a license applicant demonstrate that the biological product that is the subject of the application is safe, pure, and potent, and that the manufacturing facilities are designed to assure that the biological product continues to be safe, pure, and potent.

AHG and BGR are also medical devices and in vitro diagnostic products as defined in § 809.3(a) and therefore are subject under the act and 21 CFR 809.20(b) to the requirements in the quality system regulation (QSR) in part

820 (21 CFR part 820). The QSR requires that a manufacturer establish appropriate manufacturing controls. A manufacturer must validate the manufacturing process in accordance with § 820.75 and establish production and process controls (§ 820.70). See also the ''Guideline for the Manufacture of In Vitro Diagnostic Products'' published in the **Federal Register** of January 10, 1994 (59 FR 1402).

The standards for AHG and BGR were established by final rules published in the **Federal Register** of February 11, 1985, and April 19, 1988, respectively (50 FR 5574 and 53 FR 12760). The standards in §§ 660.20(a) and 660.50(a) require BGR and AHG to be manufactured by a ''method demonstrated to consistently yield a sterile product.'' In addition, the requirements for processing methods of BGR and AHG under §§ 660.21(a)(2) and 660.51(a)(3) state that ''[o]nly that material that has been fully processed, thoroughly mixed in a single vessel, and sterile filtered shall constitute a lot,'' and under §§ 660.21(a)(3) and 660.51(a)(4) that ''[a] lot may be subdivided into clean sterile vessels''.

When the regulations were codified, the agency expected that AHG and BGR would be manufactured as sterile under the conditions understood at that time. The agency also considered that the process of sterile filtration and a sterile container and closure system, e.g., vessels, would be sufficient to yield consistently a sterile product (50 FR 5574 at 5575; 53 FR 12760 at 12761). However, current good manufacturing practices require aseptic processing controls to be in place in order to ensure a sterile product. The agency considers AHG and BGR to be microbiologically controlled IVD's, which are IVD's that are capable of supporting microorganism life and growth and may contain certain levels of microorganisms. Microbiologically controlled IVD's do not need to be manufactured under aseptic conditions; however, they should be manufactured under conditions such that the microbial level will not adversely impact product performance. Manufacturers must establish specifications for these products through testing and validation. FDA's revision of the regulations would in no way undermine the safety, potency, or purity of the products. The revisions would also not prevent a manufacturer from implementing aseptic processing controls for manufacturing AHG and BGR, if the manufacturer determines such controls are appropriate for its product. Therefore, the agency is revising the standards for AHG and BGR to remove the requirement that these products be sterile.

II. Highlights of the Direct Final Rule

FDA is amending the biologics regulations by revising §§ 660.20, 660.21, 660.50, and 660.51 to clarify the agency's requirements with regard to microbiological control in manufacturing AHG and BGR. FDA is amending the regulations by deleting all references to sterile processing techniques such as sterile filtration and sterile container and closure systems. FDA is amending §§ 660.20(a) and 660.50(a) by deleting the phrase regarding preparation ''by a method demonstrated to yield consistently a sterile product'' because FDA recognizes that controls to ensure a sterile product, i.e., aseptic processing controls, are not necessary to ensure that AHG and BGR meet their performance specifications. In addition, § 660.21(a)(1) and 660.51(a)(1) include requirements regarding the adequacy of the processing method. FDA is amending §§ 660.21(a)(2) and 660.51(a)(3) by deleting the term ''sterile'' because the manufacturer must establish those controls appropriate for its product, and it may not be necessary for microbiologically controlled IVD's to undergo sterile filtration. FDA is amending §§ 660.21(a)(3) and 660.51(a)(4) by deleting the reference to ''clean, sterile vessels'' because FDA believes that manufacturers are in the best position to determine the appropriate level of microbial control for container and closure systems. Appropriate process specifications must be established by the manufacturer to ensure that microbiologically controlled IVD's are manufactured under appropriate conditions and controls resulting in a product that consistently meets all of its specifications. The manufacturer must demonstrate in the license application that the appropriate level of control of microbial contamination ensures that the biological product continues to meet the licensing requirements. The change to the regulation in no way affects the testing and validation a manufacturer must perform in order to establish that the manufacturing specifications are appropriate to ensure the product will perform as intended. In addition, under the current good manufacturing practice regulations for blood and blood components, end users of AHG and BGR, such as blood banks, are required under § 606.65(c) to perform daily checks for potency and specificity of supplies and reagents used in the collection and testing of blood and blood components.

The agency also believes the change is consistent with other requirements in the biologics regulations, such as the sterility testing requirements set forth in § 610.12. This section requires sterility testing for most biological products; however, BGR and AHG are specifically exempted from the sterility testing requirements for bulk and final container material (§ 610.12(g)(4)).

The direct final rule will also remove the requirement in § 660.51(a)(4) that a manufacturer who subdivides a lot shall include this information on the protocol. FDA is making this change to reflect current agency practice. Manufacturers will still be required to submit this information in the license application. See § 601.2 regarding requirements for the submission of samples and protocols to FDA.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA has determined that this rule is appropriate for direct final rulemaking because FDA views this rule as including only noncontroversial amendments and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register**, a companion proposed rule to amend the biologics regulations by amending the existing regulations to be more consistent with current accepted practices. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comment received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA has provided a comment period on the direct final rule of 75 days after December 12, 2000. If the agency receives any significant adverse comment, FDA intends to withdraw this direct final rule action by publication of a document in the **Federal Register** before the effective date of the direct final rule. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants

terminating a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice and comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of a significant adverse comment.

If any significant adverse comment is received during the comment period, FDA will publish, before the effective date of this direct final rule, a document withdrawing the direct final rule. If FDA withdraws the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation document, before the effective date of the direct final rule, confirming the effective date.

IV. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because the direct final rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the direct final rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act of 1995 because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. The Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VI. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this direct final rule by February 26, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 660 is amended as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

1. The authority citation for 21 CFR part 660 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 660.20 [Amended]

2. Section 660.20 *Blood Grouping Reagent* is amended in paragraph (a) by removing the words ''prepared by a method demonstrated to yield consistently a sterile product and''.

§ 660.21 [Amended]

3. Section 660.21 *Processing* is amended in paragraph (a)(2) by removing the word ''sterile''; and in paragraph (a)(3) by removing the words ''clean, sterile vessels. Each subdivision shall constitute a sublot.'' and adding in its place the word ''sublots.''

§ 660.50 [Amended]

4. Section 660.50 *Anti-Human Globulin* is amended in paragraph (a) by removing the words ''and be prepared by a method demonstrated to yield consistently a sterile product''.

§ 660.51 [Amended]

5. Section 660.51 *Processing* is amended in the first sentence of paragraph (a)(3) by removing the word ''sterile'', and in paragraph (a)(4) by removing the words ''clean, sterile vessels. Each subdivision shall constitute a sublot'' and adding in its the word ''sublots'', and in the third sentence by removing the words ''and on the protocol''.

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31586 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

31 CFR Part 29

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing final regulations to implement the provisions of Title XI of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the Secretary of the Treasury responsibility for payment of benefits under the District of Columbia (District) retirement plan for judges regardless of when accrued and under the District retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997. The regulations establish the general rules for the Department of the Treasury's administration of its program responsibilities and the methodology for determining the amount of Federal Benefit Payments.

DATE: This final rule is effective January 11, 2001, except § 29.102(a)(3) and subpart C of part 29 are effective March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 622–1540, Department of the Treasury, Metropolitan Square Building, Room 6033, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On December 13, 1999, the Department of the Treasury published (at 64 FR 69432) proposed regulations to implement Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552. The Act transferred certain unfunded pension liabilities from the District of Columbia (District) government to the Federal Government. The Act also required the Federal Government to assume responsibility for payment of benefits under the District retirement plan for judges regardless of when accrued and under the District retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997.

The proposed regulations addressed both the general rules for the Department of the Treasury's administration of its program responsibilities and the methodology for determining the amount of Federal Benefit Payments for police, firefighters, and teachers. The Department has determined that it is impracticable to end the interim benefits administration period described in section 11041(a) of the Act until it has developed an automated data processing system that will make Federal Benefit Payments calculations in accordance with these regulations. Consequently, the effective date of the final regulations concerning the methodology for determining the amount of Federal Benefit Payments must be delayed until the automated system becomes operational, which is expected to occur on March 31, 2001. Accordingly, the regulations pertaining to the methodology for determining the amount of Federal Benefit Payments (subpart C of the proposed rules) are scheduled to become effective on March 31, 2001.

The general rules for the Department of the Treasury's administration of its program responsibilities (subparts A and B of the proposed rules) will be effective 30 days after publication of this rule, with the exception of section 29.102(a)(3), which shall become effective on March 31, 2001. The general rules establish the regulatory framework for other regulations the Department is preparing pursuant to section 11083 of the Act.

In the notice of proposed rulemaking (NPRM), subparts A through C were designated to become a new part 28 of Title 31, Code of Federal Regulations. However, before publication of the NPRM, proposed regulations on Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance were published (at 64 FR 58568) on October 29, 1999, as part 28. The final regulations on Federal Benefit Payments Under Certain District of Columbia Retirement Plans have been renumbered as part 29. The following discussion of the comments received under the proposed rule uses the old section numbers for convenience.

The Department received two comments on the proposed regulations. The Department has accepted 9 of the 10 suggestions made in the comments.

Proposed section 28.105(a) provided the rule for computing the end date for a period of time for filing documents under these regulations. One comment observed that District offices are closed on District holidays as well as Saturday, Sunday, and Federal holidays. Since the regulations generally require that documents be filed with the District, the last day of the filing must be extended by a day if the last day for filing falls on a District holiday. Section 29.105(a) has been changed to treat District holidays in the same manner as Federal holidays for filing time limits.

Proposed section 28.105(c) provided the rule for computing the amount of unused sick leave creditable for annuity computation purposes. One comment noted that paragraph (c)(1) of that section incorrectly stated the rule under the Police and Firefighters Plan. Under section 4–622 of the D.C. Code, survivors of participants who die in service do not receive credit for unused sick leave. The calculation of a survivor annuity in such cases depends only on the average salary of the policeman or firefighter at the time of death. Similarly, certain disability annuity calculations, which are based on a disability percentage rather than the length of service, do not include credit for unused sick leave. The regulatory text has been corrected by deleting references to unused sick leave in such circumstances.

Proposed section 28.106 provided for recognition of representative payees for recipients of Federal Benefit Payments under the same rules as apply to other benefits under each plan. The section includes a reference to section 4–629(b) of the DC Code as an example of a plan provision for payment to a representative payee. One comment suggested that the reference be clarified to indicate that section 4–629(b) applies to the Police and Firefighter Plan. The reference has been changed to so indicate.

Proposed section 28.203 provided that legal process to affect Federal Benefit Payments should be served upon District officials in three specific situations. The supplementary information to the proposed regulations stated that in all other situations service of process was to be made upon the United States and the Department of the Treasury. One comment requested an explanation of the extent to which legal process should be served upon the United States and the Department of the Treasury in disputes over annuity amounts.

The Department of the Treasury has reconsidered the entire issue of service of process affecting Federal Benefit Payments. The Department has concluded that legal process under section 659 of title 42, United States Code and part 581 of Title 5, Code of Federal Regulations, that is, process implementing an order for alimony or child support; or any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefit Payments as

representative payees under section 29.106 must be served upon the Department of the Treasury. The address for service of these types of process has been added as an appendix to subpart B of part 29. The Department will also request the U.S. Office of Personnel Management to make a similar change to appendix A of part 581 of Title 5, Code of Federal Regulations. Any qualifying court order under chapter 30 of title 1 of the DC Code (1997) must be served upon the District of Columbia in accordance with any rules issued under section 1–3005 of the DC Code. All other process regarding Federal Benefit Payments must be served upon the United States in accordance with applicable law. Process involving retirement benefits payable by the District of Columbia must be served upon the District in accordance with applicable law.

Proposed section 28.302 defined the term disability retirement for use in subpart C of part 28. One comment noted that the definition should have referred to the statutory provision for teacher disability retirement for teachers who retired after June 30, 1946. The statutory reference in the final regulation has been changed to reflect the statute applicable to teachers who retire on disability retirement after June 30, 1946.

Proposed section 28.302 also defined the term military service for use in subpart C of part 28. One comment noted that the definition erroneously included a deposit requirement for a teacher to be eligible for credit for honorable active military service. The definition has been corrected to eliminate the error.

Proposed section 28.322 provided service credit rules concerning disability retirement after June 30, 1997. Paragraph (b) of that section also contained information about the commencing date of Federal Benefit Payments in such cases. One comment noted that paragraph (b) of that section contained an incorrect reference to proposed section 28.342 that pertains to maximum annuity calculations. The reference should have been to proposed section 28.343, which relates to the calculation of the Federal Benefit Payment in disability retirement cases. The supplementary information to the proposed regulation contained several similar errors that appear to be the result of a change in section numbering late in the drafting process. The references have been corrected in the final regulations.

One comment objected to proposed section 28.322(b) and suggested that Federal Benefit Payments should commence at separation in cases of disability retirement where the former employee has not met the criteria for optional retirement. The relevant language in the proposed regulation states:

> If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee * * * [d]oes not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age.

The suggested change would not be consistent with the statutory language that the regulation implements. Section 11012(c) of the Balanced Budget Act states, in pertinent part:

> *Special Rule Regarding Disability Benefits.*—To the extent that any portion of a benefit payment to which an individual is entitled under a District Retirement Program is based on a determination of disability made by the District of Columbia Retirement Board or the Trustee after [June 30, 1997], the Federal benefit payment with respect to the individual shall be in an amount equal to the deferred retirement benefit * * * the individual would receive if the individual left service on the day before the commencement of the disability retirement benefits.

Since the disability retiree is not entitled to any amount of deferred retirement benefit until he or she reaches the appropriate age for deferred retirement, there is no ''amount equal to the deferred retirement benefit'' for the period between separation and the commencing date for the deferred retirement benefit. Accordingly, the proposed regulation correctly reflects the statutory provision.

Moreover, if Federal Benefit Payments began at separation in cases of disability retirement where the employee had not yet reached the age for deferred retirement, the District government would control the commencement of such benefits by finding the employee eligible for disability retirement. This would be contrary to sections 11021 and 11035(d) of the Act, which provide that only the Secretary or the Trustee shall determine whether an individual is eligible to receive a Federal Benefit Payment under the Act.

Proposed section 28.344 provided the rule for calculating Federal Benefit Payments in cases involving death benefits. Examples 13A through 13C of appendix A to proposed part 28 illustrated the death-benefit calculations. One comment noted that no example illustrates the survivor annuity calculation in cases in which the guaranteed minimum is based on a projection of service to age 60. Example 13D has been added in the final regulations to illustrate such a case. The projection to age 60 only affects the total survivor-annuity computation. As in 40-percent guaranteed minimum cases, Federal Benefit Payments are in the same proportion to the total survivor annuity as the amount of service as of June 30, 1997, is to the amount of total service.

Example 10B in appendix A to proposed part 28 illustrated the computation of a reduced annuity to provide a survivor annuity. One comment noted an error in the amount labeled ''Total Reduced.'' The annual amount should have been $42,374.13, but was published as $43,374.13. The annual amount has been corrected in the final regulations. The monthly amount was correctly computed based on the lower amount.

Executive Order 12866, Regulatory Review

Because this rule is not a significant regulatory action for purposes of Executive Order 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Teachers.

Department of the Treasury.

Lisa G. Ross,

Acting Assistant Secretary of the Treasury.

Accordingly, the Department of the Treasury, is amending subtitle A of title 31 of the Code of Federal Regulations to add part 29 to read as follows:

PART 29—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT OF COLUMBIA RETIREMENT PROGRAMS

Subpart A—General Provisions

Sec.

29.101 Purpose and scope.
29.102 Related regulations.
29.103 Definitions.
29.104 Schedule for Federal Benefit Payments.

29.105 Computation of time.
29.106 Representative payees.

Subpart B—Coordination With the District Government

29.201 Purpose and scope.
29.202 Definitions. [Reserved]
29.203 Service of Process.

Appendix A to Subpart B of Part 29—Addresses for Service of Process Under § 29.203

Subpart C—Split Benefits

29.301 Purpose and scope.
29.302 Definitions.

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

29.311 Credit only for service performed on or before June 30, 1997.
29.312 All requirements for credit must be satisfied by June 30, 1997.
29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

29.321 General principle.
29.322 Disability benefits.

All Requirements for Credit Must be Satisfied by June 30, 1997

29.331 General principle.
29.332 Unused sick leave.
29.333 Military service.
29.334 Deposit service.
29.335 Refunded service.

Calculation of the Amount of Federal Benefit Payments

29.341 General principle.
29.342 Computed annuity exceeds the statutory maximum.
29.343 Disability benefits.
29.344 Survivor benefits.
29.345 Cost-of-living adjustments.
29.346 Reduction for survivor benefits.

Appendix A to Subpart C of Part 29—Examples

Authority: Sections 11083 and 11251(a) of Pub. L. 105–33, 111 Stat. 730 and 756, as amended by Pub. L. 105–277, 112 Stat. 2681–530 through 2681–538.

Subpart A—General Provisions

§ 29.101 Purpose and scope.

(a) This part contains the Department's regulations implementing Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, enacted August 5, 1997, as amended.

(b) This subpart contains general information to assist in the use of this part including—

(1) Information about related regulations (§ 29.102),

(2) Definitions of terms used in more than one subpart of this part (§ 29.103), and

(3) The Department's general rules and procedures, applicable to the retirement plans for District of Columbia teachers, police and fire fighters, and judges that concern the administration of Federal Benefit Payments (§§ 29.104–29.106).

(c) This part applies to all Federal Benefit Payments made on or after October 1, 1997.

(d) This part does not apply to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division.

§ 29.102 Related regulations.

(a) This part contains the following subparts:

(1) General Provisions (Subpart A);

(2) Coordination With the District Government (Subpart B); and (3) Split Benefits (Subpart C).

(b) Part 581 of Title 5, Code of Federal Regulations, contains information about garnishment of certain Federal payments to enforce awards of alimony or child support.

(c) Part 831 of Title 5, Code of Federal Regulations, contains information about benefits under the Civil Service Retirement System.

(d) Part 870 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Group Life Insurance Program.

(e) Part 890 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Health Benefits Program.

§ 29.103 Definitions.

(a) In this part—

District government means the government of the District of Columbia.

Department means the United States Department of the Treasury.

Federal Benefit Payment means a payment for which the Department is responsible under Title XI of the Balanced Budget Act of 1997 (Public Law 105–33, 111 Stat. 251), as amended, to which an individual is entitled under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan, in such amount and under such terms and conditions as may apply under such plans.

Freeze date means June 30, 1997.

Judges Plan means the retirement program (under subchapter III of chapter 15 of title 11 of the D.C. Code) for judges of the District of Columbia Court of Appeals or Superior Court or with judicial service with the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

OPM means the United States Office of Personnel Management.

Police and Firefighters Plan means any of the retirement programs (under chapter 6 of title 4 of the D.C. Code) for members of the Metropolitan Police Force and Fire Department in effect on June 29, 1997.

Secretary means the Secretary of the United States Department of the Treasury or his or her designee.

Teachers Plan means any of the retirement programs for teachers (under chapter 12 of title 31 of the D.C. Code) in effect on June 29, 1997.

(b) In this subpart—

Legal process means—

(1) Any document that qualifies as legal process as defined in § 581.103 of Title 5, Code of Federal Regulations; or

(2) Any court order that Federal or District of Columbia law permits to cause all or any portion of a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan to be made to a former spouse under chapter 30 of title 1 of the D.C. Code (1997).

Representative payee means a fiduciary to whom a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan is made for the benefit of a plan participant or a survivor.

§ 29.104 Schedule for Federal Benefit Payments.

Federal Benefit Payments are payable on the first business day of the month following the month in which the benefit accrues. (See § 29.105(b).)

§ 29.105 Computation of time.

(a) *For filing documents.* In computing the number of days allowed for filing a document, the first day counted is the day after the action or event from which the period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, a Sunday, a Federal holiday, or a District holiday, the period runs until the end of the next day that is not a Saturday, a Sunday, or a Federal or a District holiday.

(b) *For benefit accrual.* (1) Annuity accrues on a daily basis; one-thirtieth of the monthly rate constitutes the daily rate.

(2) Annuity does not accrue on the 31st day of any month except that annuity accrues on the 31st day of the initial month if the employee's annuity commences on the 31st day of a 31-day month.

(3) For accrual purposes the last day of a 28-day month counts as 3 days and

the last day of a 29-day month counts as 2 days.

(c) *For counting unused sick leave.* (1) For annuity computation purposes—

(i) The service of a participant under the Police and Firefighters Plan who retires on an immediate annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system; and

(ii) The service of a participant under the Teachers Plan who retires on an immediate annuity or dies leaving a survivor entitled to an annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system.

(2) In general, 8 hours of unused sick leave increases total service by 1 day. In cases where more or less than 8 hours of sick leave would be charged for a day's absence, total service is increased by the number of days in the period between the date of separation and the date that the unused sick leave would have expired had the employee used it (except that holidays falling within the period are treated as work days, and no additional leave credit is earned for that period).

(3) If an employee's tour of duty changes from part time to full time or full time to part time within 180 days before retirement, the credit for unused sick leave is computed as though no change had occurred.

(d) *For counting leave without pay (LWOP) that is creditable service.* (1) Under the Police and Firefighters Plan, credit is allowed for no more than 6 months of LWOP in each calendar year.

(2)(i) Under the Teachers Plan, credit is allowed for no more than 6 months of LWOP in each fiscal year.

(ii)(A) For years prior to fiscal year 1976, each fiscal year started on July 1 and ended on the following June 30.

(B) Fiscal year 1976 started on July 1, 1975, and ended on September 30, 1976.

(C) For years starting in fiscal year 1977, each fiscal year starts on October 1 and ends on the following September 30.

§ 29.106 Representative payees.

For Federal Benefit Payments, representative payees will be authorized to the same extent and under the same circumstances as each plan permits for non-Federal Benefit Payments under the plan. (See *e.g.*, section 4–629(b) of the D.C. Code (1997) (applicable to the Police and Firefighters Plan).)

Subpart B—Coordination With the District Government

§ 29.201 Purpose and scope.

This subpart contains information concerning the relationship between the Department and the District government in the administration of Title XI of the Balanced Budget Act of 1997, as amended, and the functions of each in the administration of that Act.

§ 29.202 Definitions. [Reserved]

§ 29.203 Service of Process.

To affect Federal Benefit Payments—

(a) Service must be made upon the Department at the address provided in appendix A to this subpart for—

(1) Legal process under section 659 of title 42, United States Code, and part 581 of Title 5, Code of Federal Regulations, or

(2) Any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefit Payments as representative payees under § 29.106;

(b)(1) Service must be made upon the District government in accordance with any rules issued under section 1–3005 of the D.C. Code for any qualifying court order under chapter 30 of title 1 of the D.C. Code (1997), and

(2) The District government must notify the Department and forward a copy of such an order to the address provided in appendix A to this subpart within 3 days of receipt of the order; and

(c) All other process regarding Federal Benefit Payments must be served upon the United States in accordance with applicable law.

Appendix A to Subpart B of Part 29—Addresses for Service Under § 29.203

1. The mailing address for delivery of documents described in § 29.203(a) by the United States Postal Service is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

2. The address for delivery of documents described in § 29.203(a) by process servers, express carriers, or other forms of handcarried delivery is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 655 15th Street (F Street side), NW., Washington, DC.

Subpart C—Split Benefits

§ 29.301 Purpose and scope.

(a) The purpose of this subpart is to addresses the legal and policy issues that affect the calculation of the Federal and District of Columbia portions of benefits under subtitle A of Title XI of the Balanced Budget Act of 1977, Public Law 105–33, 111 Stat. 251, 712–731, enacted August 5, 1997, as amended.

(1) This subpart states general principles for the calculation of Federal Benefit Payments in cases in which the Department and the District government are both responsible for paying a portion of an employee's total retirement benefits under the Police and Firefighters Plan or the Teachers Plan.

(2) This subpart provides illustrative examples of sample computations to show the application of the general principles to specific problems.

(b)(1) This subpart applies only to benefits under the Police and Firefighters Plan or the Teachers Plan for individuals who have performed service creditable under these programs on or before June 30, 1997.

(2) This subpart addresses only those issues that affect the split of fiscal responsibility for retirement benefits (that is, the calculation of Federal Benefit Payments).

(3) Issues relating to determination and review of eligibility and payments, and financial management, are beyond the scope of this subpart.

(c) This subpart does not apply to benefit calculations under the Judges Plan.

§ 29.302 Definitions.

In this subpart (including appendix A of this subpart)—

Deferred retirement means retirement under section 4–623 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1231(a) of the D.C. Code (1997) (under the Teachers Plan).

Deferred retirement age means the age at which a deferred annuity begins to accrue, that is, age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan.

Department service or *departmental service* means any period of employment in a position covered by the Police and Firefighters Plan or Teachers Plan. *Department service* or *departmental service* may include certain periods of military service that interrupt a period of employment under the Police and Firefighters Plan or the Teachers Plan.

Disability retirement means retirement under section 4–615 or section 4–616 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1225 of the D.C. Code (1997) (under the Teachers Plan), regardless of whether the disability was incurred in the line of duty.

Enter on duty means commencement of employment in a position covered by the Police and Firefighters Plan or the Teachers Plan.

Excess leave without pay or *excess LWOP* means a period of time in a non-pay status that in any year is greater than the amount creditable as service under § 29.105(d).

Hire date means the date the employee entered on duty.

Military service means—

(1) For the Police and Firefighters Plan, military service as defined in section 4–607 of the D.C. Code (1997) that is creditable as other service under section 4–602 or section 4–610 of the D.C. Code (1997); and

(2) For the Teachers Plan, military service as described in section 31–1230(a)(4) of the D.C. Code (1997).

Optional retirement means regular longevity retirement under section 4–618 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1224(a) of the D.C. Code (1997) (under the Teachers Plan).

Other service means any period of creditable service other than departmental service or unused sick leave. *Other service* includes service that becomes creditable upon payment of a deposit, such as service in another school system under the Teachers Plan (under section 31–1208 of the D.C. Code (1997)); and service that is creditable without payment of a deposit, such as military service occurring prior to employment under the Police and Firefighters Plan.

Pre-80 hire means an individual whose annuity is computed using the formula under the Police and Firefighters Plan applicable to individuals hired before February 15, 1980.

Pre-96 hire means an individual whose annuity is computed using the formula under the Teachers Plan applicable to individuals hired before November 10, 1996.

Sick leave means unused sick leave, which is creditable in a retirement computation, as calculated under § 29.105(c).

General Principles for Determining Service Credit to Calculate Federal Benefit Payments

§ 29.311 Credit only for service performed on or before June 30, 1997.

Only service performed on or before June 30, 1997, is credited toward Federal Benefit Payments.

§ 29.312 All requirements for credit must be satisfied by June 30, 1997.

Service is counted toward Federal Benefit Payments only if all requirements for the service to be creditable are satisfied as of June 30, 1997.

§ 29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Except as otherwise provided in this subpart, the amount of Federal Benefit Payments is computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

§ 29.321 General principle.

Any service performed after June 30, 1997, may never be credited toward Federal Benefit Payments.

§ 29.322 Disability benefits.

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee—

(a) Satisfies the age and service requirements for optional retirement, the Federal Benefit Payment commences immediately, that is, the Federal Benefit Payment is calculated as though the employee retired under optional retirement rules using only service through June 30, 1997 (See examples 7A and 7B of appendix A of this subpart); or

(b) Does not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age. (See § 29.343.)

All Requirements for Credit Must Be Satisfied by June 30, 1997

§ 29.331 General principle.

To determine whether service is creditable for the computation of Federal Benefit Payments under this subpart, the controlling factor is whether all requirements for the service to be creditable under the Police and Firefighters Plan or the Teachers Plan were satisfied as of June 30, 1997.

§ 29.332 Unused sick leave.

(a) For employees separated for retirement as of June 30, 1997, Federal Benefit Payments include credit for any unused sick leave that is creditable under the applicable plan.

(b) For employees separated for retirement after June 30, 1997, no unused sick leave is creditable toward Federal Benefit Payments.

§ 29.333 Military service.

(a) For employees who entered on duty on or before June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments under the terms and conditions applicable to each plan.

(b) For employees who enter on duty after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed as of June 30, 1997.

(c) For employees who entered on duty on or before June 30, 1997, but who perform military service after that date, the credit for military service is not included in Federal Benefit Payments.

§ 29.334 Deposit service.

(a) *Teachers Plan.* (1) Periods of civilian service that were not subject to retirement deductions at the time they were performed are creditable for Federal Benefit Payments under the Teachers Plan if the deposit for the service was paid in full to the Teachers Plan as of June 30, 1997.

(2) No credit is allowed for Federal Benefit Payments under the Teachers Plan for any period of civilian service that was not subject to retirement deductions at the time it was performed if the deposit for the service was not paid in full as of June 30, 1997.

(b) *Police and Firefighters Plan.* No credit is allowed for Federal Benefit Payments under the Police and Firefighters Plan for any period of civilian service that was not subject to retirement deductions at the time that the service was performed. (See definition of ''governmental service'' at D.C. Code section 4–607(15) (1997).)

§ 29.335 Refunded service.

(a) Periods of civilian service that were subject to retirement deductions but for which the deductions were refunded to the employee are creditable for Federal Benefit Payments if the redeposit for the service was paid in full to the District government as of June 30, 1997.

(b) No credit is allowed for Federal Benefit Payments for any period of civilian service that was subject to retirement deductions but for which the deductions were refunded to the employee if the redeposit for the service was not paid in full to the District government as of June 30, 1997.

Calculation of the Amount of Federal Benefit Payments

§ 29.341 General principle.

Except for disability retirements after June 30, 1997, and certain death benefits based on deaths after June 30, 1997, in which the calculation is not based upon length of service (see § 29.344); for cases in which some service is creditable on or before June 30, 1997, and some service is creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though—

(a) The employee were eligible to retire effective July 1, 1997, under the same conditions as the actual retirement (that is, using the annuity computation

formula that applies under the plan in effect on June 29, 1997, and the actual retirement age, including any applicable age reduction, based on the age at actual retirement);

(b) The service that became creditable after June 30, 1997, did not exist; and

(c) The average salary is the average salary at separation.

Note to § 29.341: See examples 7B, 9, and 13 of appendix A of this subpart.

§ 29.342 Computed annuity exceeds the statutory maximum.

(a) In cases in which the total computed annuity exceeds the statutory maximum:

(1) Federal Benefit Payments may equal total benefits even if the employee had service after June 30, 1997.

(2) If the employee had sufficient service as of June 30, 1997, to qualify for the maximum annuity under the plan, the Federal Benefit Payment is the maximum annuity under the plan. This will be the entire benefit except for any amount in excess of the normal maximum due to unused sick leave, which is the responsibility of the District. (See example 3, of appendix A of this subpart.)

(b) If the employee did not perform sufficient service as of June 30, 1997, to reach the statutory maximum benefit, but has sufficient service at actual retirement to exceed the statutory maximum, the Federal Benefit Payment is the amount earned through June 30, 1997. The non-Federal-Benefit-Payment portion of the total benefit consists of only the amount by which the total benefit payable exceeds the Federal Benefit Payment.

§ 29.343 Disability benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to disability benefits prior to optional retirement age.

(b) In cases involving disability benefits prior to optional retirement age, no Federal Benefit Payment is payable until the retiree reaches the age of eligibility to receive a deferred annuity (age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan). When the age for deferred annuity is reached, the Federal Benefit Payment is paid using creditable service accrued as of June 30, 1997, and average salary (computed under the rules for the applicable plan) as of the date of separation. (See examples 6 and 7 of appendix A of this subpart.)

§ 29.344 Survivor benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to death benefits that are not determined by length of service.

(b) In cases in which the amount of death benefits is not determined by length of service, the amount of Federal Benefit Payments is calculated by multiplying the amount of the total benefit payable by the number of full months of service through June 30, 1997, and then dividing by the number of months of total service at retirement (for elected survivor benefits) or death (for guaranteed-minimum death-in-service survivor benefits). (See example 13 of appendix A of this subpart.)

§ 29.345 Cost-of-living adjustments.

Cost-of-living increases are applied directly to Federal Benefit Payments, rather than computed on the total benefit and then prorated. (See example 14 of appendix A of this subpart.)

§ 29.346 Reduction for survivor benefits.

(a) If a retiree designates a base for a survivor annuity that is greater than or equal to the unreduced Federal Benefit Payment, the applicable plan's annuity reduction formula is applied to the unreduced Federal Benefit Payment to determine the reduced Federal Benefit Payment. (See example 10 of appendix A of this subpart.)

(b) If a retiree designates a base for a survivor annuity that is less than the amount of the Federal Benefit Payment, the entire survivor reduction applies to the Federal Benefit Payment to determine the reduced Federal Benefit Payment.

Appendix A to Subpart C of Part 29—Examples

This appendix contains sample calculations of Federal Benefit Payments in a variety of situations.

Optional Retirement Examples

Example 1: No Unused Sick Leave

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in October 1997. At retirement, he is age 51 with 20 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 19 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 23 years and 1 month of service, all at the 2.5 percent accrual rate. The total annuity is based on 23 years and 4 months of service, all at the 2.5 percent accrual rate.

EXAMPLE 1A.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 10/11/97
Department service: 20/00/03
Other service: 03/04/21
Sick leave:
.025 service: 23.333333
.03 service:
Average salary: $45,680.80
Total: $26,647.12
Total/month: $2,221.00

Federal Benefit Payment Computation

Birth date: 9/10/46
Hire date: 10/09/77
Freeze date: 06/30/97
Department service: 19/08/22
Other service: 03/04/21
Sick leave:
.025 service: 23.083333
.03 service:
Average salary: $45,680.80
Total: $26,361.61
Total/month: $2,197.00

B. In this example, the individual covered by the Police and Firefighters Plan was hired earlier than in example 1A and thus performed more service as of both June 30, 1997, and retirement in October 1997. At retirement, he is age 51 with 21 years, 11 months and 29 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 21 years, 8 months, and 18 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 25 years and 1 month of service, 1 year and 8 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 18 days of departmental service and 21 days of other service). The total annuity is based on 25 years and 4 months of service, 1 year and 11 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 29 days of departmental service and 21 days of other service).

EXAMPLE 1B.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 10/11/97
Department service: 21/11/29
Other service: 03/04/21
Sick leave:
.025 service: 23.416667

EXAMPLE 1B.—POLICE OPTIONAL—Continued

[Pre-80 hire]

.03 service: 1.916667
Average salary: $45,680.80
Total: $29,368.96
Total/month $2,447.00

Federal Benefit Payment Computation

Birth date: 09/10/46
Hire date: 10/13/75
Freeze date: 06/30/97
Department service: 21/08/18
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.666667
Average salary: $45,680.80
Total: $29,026.36
Total/month: $2,419.00

Example 2: Unused Sick Leave Credit

In this example, an individual covered by the Police and Firefighters Plan and hired before 1980 retires in March 1998. At retirement, she is age 48 with 24 years, 8 months, and 6 days of departmental service plus 6 months and 4 days of other service (deposit paid before June 30, 1997) and 11 months and 11 days of unused sick leave. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1968 hours (246 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 2069 hours (341 days divided by 360 days per year times 2184 hours per year). The Federal Benefit Payment begins at retirement. It is based on the 23 years, 11 months, and 23 days of departmental service performed as of June 30, 1997, and 6 months and 4 days of other service. Thus, the Federal Benefit Payment is based on 20 years departmental and 6 months of other service at the 2.5 percent accrual rate and 3 years and 11 months of service at the 3.0 percent accrual rate. The total annuity is based on 20 years and 6 months of service at the 2.5 percent accrual rate and 5 years and 7 months of service at the 3 percent accrual rate.

EXAMPLE 2.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 05/01/49
Hire date: 07/08/73
Separation date: 03/13/98
Department service: 24/08/06
Other service: 00/06/04
Sick leave: 00/11/11
.025 service: 20.5
.03 service: 5.583333
Average salary: $61,264.24
Total: $41,659.68
Total/month: $3,472.00

Federal Benefit Payment Computation

Birth date: 05/01/49
Hire date: 07/08/73

EXAMPLE 2.—POLICE OPTIONAL—Continued

[Pre-80 hire]

Freeze date: 06/30/97
Department service: 23/11/23
Other service: 00/06/04
Sick leave:
.025 service: 20.5
.03 service: 3.916667
Average salary: $61,264.24
Total: $38,596.47
Total/month: $3,216.00

Example 3: Calculated Benefit Exceeds Statutory Maximum

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in March 1998. At retirement, he is age 55 with 32 years and 17 days of departmental service. The Federal Benefit Payment begins at retirement. It is based on the 31 years, 3 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 11 years and 3 months of service at the 3.0 percent accrual rate. However, the annuity is limited to 80 percent of the basic salary at time of retirement. (This limitation does not apply to the unused sick leave credit.) The annuity computed as of June 30, 1997, equals the full benefit payable; therefore, the Federal Benefit Payment is the total benefit.

EXAMPLE 3A.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total: $64,782.34
Total/month: $5,399.00
Maximum: $61,744.00
$5,145.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 03/30/97
Department service: 31/03/17
Other service:
Sick leave:
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
$5,145.00

B. In this example, the individual in example 3A also has 6 months of unused sick leave at retirement. The sick leave credit is not subject to the 80% limitation and does not become creditable service until the date of separation. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1040 hours (130 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 1092 hours (180 days divided by 360 days per year times 2184 hours per year). Six months of unused sick leave increases the annual total benefit by 1.5 percent of the average salary, or in the example by $94 per month. The District is responsible for the portion of the annuity attributable to the unused sick leave because it became creditable at retirement, that is, after June 30, 1997.

EXAMPLE 3B.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total wo/sl credit: $64,782.34
Total/month: $5,399.00
Max wo/sl credit: $61,744.00
Max w/sl credit: $62,873.92
Monthly benefit: $5,239.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 06/30/97
Department service: 31/03/17
Other service:
Sick leave: none
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
Monthly benefit: $5,145.00

Example 4: Excess Leave Without Pay

In this example, an individual covered by the Teachers Plan hired before 1996 retires in February 1998. At retirement, she is age 64 with 27 years of departmental service and 6 years, 7 months, and 28 days of other service (creditable before June 30, 1997). However, only 6 months of leave in a fiscal year without pay may be credited toward retirement under the Teachers Plan. She had 3 months and 18 days of excess leave without pay as of June 30, 1997. Since the excess leave without pay occurred before June 30, 1997, the time attributable to the excess leave without pay is subtracted from the service used in both the Federal Benefit Payment and the total benefit computations. The Federal Benefit Payment begins at retirement. It is

based on the 32 years and 8 months of service (32 years, 11 months, and 28 days minus 3 months and 18 days and the partial month dropped); 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 22 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service (33 years, 7 months and 28 days minus 3 months and 18 days and the partial month dropped) 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

Note: For the Teachers Plan, section 1230(a) of title 31 of the DC Code (1997) allows for 6 months leave without pay in any fiscal year. For the Police and Firefighters Plan, section 610(d) of title 4 of the DC Code (1997) allows for 6 months leave without pay in any calendar year.

EXAMPLE 4.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/04/33
Hire date: 03/01/71
Separation date: 02/28/98
Department service: 27/00/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.98
Total/month: $2,785.00

Federal Benefit Payment Computation

Birth date: 11/04/33
Hire date: 03/01/71
Freeze date: 06/30/97
Department service: 26/04/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 22.666667
Average salary: $53,121.00
Total: $32,713.66
Total/month: $2,726.00

Example 5: Service Credit Deposits

A. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was fully paid on or before June 30, 1997. The Federal Benefit Payment begins at retirement. It is based on the 29 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 33 years and 1 month of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 23 years and 1 month of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5A.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department Service: 30/00/03
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick Leave:
.015 service: 5
.0175 service: 5
.02 service: 23.08333; 13 days dropped
Average salary: $45,680.80
Total: $28,512.45
Total/month: $2,376.00

B. In this example, the employee in example 5A did not pay any of the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997. Thus, none of the other service is used in the computation of the Federal Benefit Payment. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was paid in full in October 1997 (at retirement). The Federal Benefit Payment begins at retirement. It is based on only the 29 years, 8 months, and 22 days of departmental service performed as of June 30, 1997; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 19 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5B.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
$0.00
Department service: 30/00/03
Other service: 03/04/21
Total deposit paid after 6/30/97
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00

C. In this example, the employee in examples 5A and B began installment payments on the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997, but did not complete the deposit until October 1997 (at retirement). The other service is not used in the computation of the Federal Benefit Payment because the payment was not completed as of June 30, 1997. Thus, the result is the same as in example 5B.

EXAMPLE 5C.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none

EXAMPLE 5C.—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00

Disability Retirement Examples

Example 6: Disability Occurs Before Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, he is age 45 with 18 years, 5 months, and 11 days of departmental service. Since he had performed less than 20 years of service and had not reached the age of eligibility for an optional retirement, the Federal Benefit Payment does not begin at retirement. When the disability annuitant reaches age 55, he satisfies the age and service requirements for deferred retirement. At that time (August 20, 2007), the Federal Benefit Payment begins. It is based on the 18 years, 1 month, and 17 days of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate.

EXAMPLE 6A.—POLICE DISABILITY IN LINE OF DUTY, AGE 45

[Pre-80 hire]

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 10/24/97
Department service: 18/05/11
Other service:
Sick leave:
.025 service: 18.416667
.03 service:
Average salary: $47,788.64
Final salary: $50,938.00
Total: $22,002.70
Total/month: $1,834.00
⅔ of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Freeze date: 06/30/97
Department service: 18/01/17
Other service:
Sick leave:
.025 service: 18.083333
.03 service:
Average salary: $47,788.64
Final salary: $50,938.00
Total: $21,604.43
Total/month: $1,800.00; deferred

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, she is age 49 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since she does not qualify for optional retirement at separation, the Federal Benefit Payment does not begin at separation. When the disability annuitant reaches age 62, she will satisfy the age and service requirements for deferred retirement. At that time (March 9, 2010), the Federal Benefit Payment begins. The time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment. Since the excess leave without pay occurred before June 30, 1997, the deferred Federal Benefit Payment is based on the 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 and 6 months of service at the 2 percent accrual rate.

EXAMPLE 6B—TEACHERS DISABILITY AGE 49

[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/48
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/48
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00; deferred

Example 7: Disability Occurs After Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, she is age 55 with 24 years, 5 months, and 11 days of departmental service. Since she was also eligible for optional retirement at the time of separation, the Federal Benefit Payment commences at retirement. It is based on the 24 years, 1 month, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 4 years and 1 month of service at the 3 percent accrual rate. The total annuity is based on the disability formula and is equal to two-thirds of average pay because that amount is higher than the 63.25 percent payable based on total service.

EXAMPLE 7A.—POLICE DISABILITY IN LINE OF DUTY AGE 55

[Pre-80 hire]

Total Annuity Computation

Birth date: 10.01/42
Hire date: 05/14/73
Separation date: 10/24/97
Department service: 24/05/11
Other service:
Sick leave:
.025 service: 20
.03 service: 4.416667
Average salary: $47,788.64
Final salary: $50,938.00
Total: $30,226.31
Total/month: $2,519.00
2/3 of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 10/01/42
Hire date: 05/14/73
Freeze date: 06/30/97
Department service: 24/01/17
Other service:
Sick leave:
.025 service: 20
.03 service: 4.083333
Average salary: $47,788.64
Final salary: $50,938.00
Total: $29,748.43
Total/month: $2,479.00

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, he is age 60 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since he qualifies for optional retirement at separation, the Federal Benefit Payment begins at retirement. Since the excess leave without pay occurred before June 30, 1997, and the total annuity is based on actual service (that is, exceeds the guaranteed disability minimum), the time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment and total benefit. The Federal Benefit Payment is based on 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6 months of service at the 2 percent accrual rate. The total annuity payable is based on 24 years of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 14 years of service at the 2 percent accrual rate.

EXAMPLE 7B.—TEACHERS DISABILITY AGE 60

[Pre-96 hire]

TotaL Annuity Computation

Birth date: 03/09/37
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/37
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00

Deferred Retirement Examples

Example 8: All Service Before June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in March 1986 with title to a deferred annuity. In November 1997, he reaches age 55 and becomes eligible for the deferred annuity based on his 15 years, 9 months, and 8 days of departmental service, all at the 2.5 percent accrual rate. The total annuity is based on the same 15 years, 9 months, and 8 days of service all at the 2.5 percent accrual rate. Since all the service is creditable as of June 30, 1997, the Federal Benefit Payment equals the total annuity.

EXAMPLE 8.—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/42
Hire date: 06/01/70
Separation date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

Federal Benefit Payment Computation

Birth date: 11/20/42
Hire date: 06/01/70
Freeze date: 03/08/86
Department service: 15/09/08

EXAMPLE 8.—POLICE DEFERRED—Continued

[Pre-80 hire]

Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

Example 9: Service Straddles June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in December 1997 with title to a deferred annuity. In November 2007, he will reach age 55 and becomes eligible to receive a deferred annuity. At that time, the Federal Benefit Payment begins. It is based on the 18 years and 1 month of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate. The total annuity begins at the same time, based on his 18 years, 6 months, and 8 days of departmental service, all at the 2.5 percent accrual rate.

EXAMPLE 9.—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/52
Hire date: 06/01/79
Separation date: 12/08/97
Department service: 18/06/08
Other service:
Sick leave:
.025 service: 18.5
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $14,072.55
Total/month: $1,173.00

Federal Benefit Payment Computation

Birth date: 11/20/52
Hire date: 06/01/79
Freeze date: 06/30/97
Department service: 18/01/00
Other service:
Sick leave:
.025 service: 18.083333
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $13,755.60
Total/month: $1,146.00; deferred

Reduction To Provide a Survivor Annuity Examples

Example 10: Survivor Reduction Calculations

Both of the following examples involve a former teacher who elected a reduced annuity to provide a survivor benefit:

A. In this example, the employee elected full survivor benefits. The Federal Benefit Payment is reduced by 2½ percent of the first $3600 and 10 percent of the balance. The total annuity is also reduced by 2½ percent of the first $3600 and 10 percent of the balance.

EXAMPLE 10A.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Reduction: $3,976.41
Total reduced: $38,487.72
Total/month: $3,207.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreducted: $41,796.28
Reduction: $3,909.63
Total reduced: $37,886.65
Total/month: $3,157.00

B. In this example, the employee elects to provide a partial survivor annuity based on $3600 per year. The Federal Benefit Payment is reduced by $90 per year. The total benefit is reduced by $90 per year.

EXAMPLE 10B.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Reduction: $90.00
Total reduced: $42,374.13
Total/month: $3,531.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire Date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18

EXAMPLE 10B.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION—Continued

[Pre-96 hire]

Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreduced: $41,796.28
Reduction: $90.00
Total reduced: $41,706.28
Total/month: $3,476.00

Early Optional or Involuntary Retirement Examples

Example 11: Early Optional With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires voluntarily in February 1998, under a special program that allows early retirement with at least 20 years of service at age 50 older, or at least 25 years of service at any age. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. Since she is not eligible for optional retirement and she is eligible to retire voluntarily only because of the District-approved special program, the Federal Benefit Payment is calculated similar to a disability retirement. It does not begin until she becomes eligible for a deferred annuity at age 62. When it commences the Federal Benefit Payment will be based on the service creditable as of June 30, 1997: 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Because the Federal Benefit Payment is based on the deferred annuity, rather than the early voluntary retirement, it is not reduced by the age reduction factor used to compute the total benefit.

EXAMPLE 11.—TEACHERS EARLY OUT W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14
Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53

EXAMPLE 11.—TEACHERS EARLY OUT W/AGE REDUCTION—Continued

[Pre-96 hire]

Total/month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Reduction factor: 1.000000 no reduction
Total reduced: $40,240.80
Total/month: $3,353.00 deferred

Example 12: Involuntary With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires involuntarily in February 1998. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. The Federal Benefit Payment begins at retirement. It is based on the 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Both the Federal Benefit Payment and the total benefit are reduced by the age reduction factor.

EXAMPLE 12.—TEACHERS INVOLUNTARY W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14
Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53
Total/month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97

EXAMPLE 12.—TEACHERS INVOLUNTARY W/AGE REDUCTION—Continued

[Pre-96 hire]

Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Age reduction factor: 0.990000
Total reduced: $39,838.39
Total/month: $3,320.00

Death Benefits Example

Example 13: Death Benefits Calculation

Regardless of whether death occurs in service or after retirement, if the death benefit is not based on the length of service, the portion of a death benefit that is a Federal Benefit Payment is based on the ratio of the number of months of the deceased employee's service as of June 30, 1997, to the number of months of the deceased employee's total service. This proration will always apply to cases of death after retirement in which the survivor annuity is based on the reduction in the employee's annuity to provide the benefit. It also applies to lump-sum benefits and benefits computed under a guaranteed-minimum or a percentage-of-disability-at-retirement formula.

A. In this example, an individual covered by the Teachers Plan retires in April 1998 with 30 years of service and elects to provide a full survivor annuity. He dies in June 1998. The Federal Benefit Payment is 97½ percent (351 months/360 months) of the total survivor benefit.

EXAMPLE 13A.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/46
Hire date: 04/01/68
Separation date: 04/01/98
Death date: 06/24/98
Department service: 30/00/00
Other service:
Sick leave:
Months: 360
Annual Benefit: $12,000.00
Monthly Benefit: $1,000.00

Federal Benefit Payment Computation

Birth date: 04/01/46
Hire date: 04/01/68
Freeze date: 06/30/97
Death date: 06/24/98
Department service: 29/03/00
Other service:
Months: 351
$11,700.00
$975.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of

departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is based on the 30 years of service as of June 30, 1997. The total benefit is based on the 31 years of total service. No proration is appropriate.

EXAMPLE 13B.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/01/39
Hire date: 07/01/67
Separation date: 06/30/98
Death date: 06/30/98
Department service: 31/00/00
Other service:
Sick leave:
Average salary: $38,787.88
Annual Benefit: $12,426.67
Monthly Benefit: $1,036.00

Federal Benefit Payment Computation

Birth date: 07/01/39
Hire date: 07/01/67
Freeze date: 06/30/97
Death date: 06/30/98
Department service: 30/00/00
Other service:
Average salary: $38,787.88
$12,000.00
$1,000.00

C. In this example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. Since the survivor annuity is based on the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13C.—TEACHERS DEATH BENEFITS

[pre-96 hire]

Total Annuity Computation

Birth date: 04/01/61
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Average salary: $36,000.00
Months: 180
Annual Benefit: $7,920.00
Monthly Benefit: $660.00

Federal Benefit Payment Computation

Birth date: 04/01/61
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department Service: 14/03/00
Average salary: $36,000.00
Months: 171
Ratio (171/180): 0.950000

EXAMPLE 13C.—TEACHERS DEATH BENEFITS—Continued

[pre-96 hire]

$7,524.00
$627.00

D. In this example, as in the prior example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. However, in this example, the teacher was age 40 on the hire date. The amount of service used in the survivor annuity calculation equals the amount of service that the teacher would have had if the teacher continued covered employment until age 60. Since the survivor annuity is based on projected service, a form of the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13D.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/43
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Departmental Service projected to age 60: 20/00/01
.015 service: 5
.0175 service: 5
.02 service: 10
Average salary: $36,000.00
Months: 180
Annual Benefit: $7,177.50
Monthly Benefit: $598.00

Federal Benefit Payment Computation

Birth date: 04/01/43
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department service: 14/03/00
Average salary: $36,000.00
Months: 171
Ratio (171/180): 0.950000
$6,818.63
$568.00

Cost of Living Adjustment Examples

Example 14: Application of Cost of Living Adjustments

Cost of living adjustments are applied directly to the Federal Benefit Payment to determine the new rate of the Federal Benefit Payment after a cost of living adjustment.

A. In this example, the cost of living adjustment is the same for the Federal Benefit Payment and the non-Federal Benefit Payment portion of the total benefit. Effectively, the total cost of living adjustment is proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14A.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.98
Total/month: $2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00

COLA Computation

DC COLA rate 4%
Total COLA: 111
New rate: 2896
Federal COLA rate 4%
Federal COLA: 56
New rate: 1454

B. In this example, a new District plan applies a different cost of living adjustment than is provided for the Federal Benefit Payment. The Federal Benefit Payment will be unaffected by the new District plan. In such a case, the total cost of living adjustment is no longer proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14B.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00

EXAMPLE 14B.—TEACHERS COST OF LIVING ADJUSTMENT—Continued

[Pre-96 hire]

Total: $33,421.96
Total/month: $2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00

COLA Computation Variations

Variation 1

DC COLA rate 5% of total benefit:
Total COLA: $139.00
New rate: $2,924.00
Federal COLA rate 4% of Federal Benefit Payment:
Federal COLA: $56.00
New rate: $1,454.00

Variation 2

DC COLA rate 5% of DC Payment:
Total COLA: $125.00
New rate: $2,910.00
Federal COLA rate 4% of Federal Benefit Payment:
Federal COLA: $56.00
New rate: $1,454.00

Retroactive Payment of Accrued Annuity Example

Example 15: Accrual of Federal Benefit Payment

The Federal Benefit Payment begins to accrue on the annuity commencing date, regardless of whether the employee is added to the annuity roll in time for the regular payment cycle. If the employee is due a retroactive payment of accrued annuity, the portion of the retroactive payment that would have been Federal Benefit Payment (if it were made in the regular payment cycle) is still Federal Benefit Payment. In this example, a teacher retired effective September 11, 1998. She was added to the retirement rolls on the pay date November 1, 1998 (October 1 to October 31 accrual cycle). Her Federal Benefit Payment is $3000 per month and her total benefit payment is $3120 per month. Her initial check is $5200 because it includes a prorated payment for 20 days (September 11 to September 30). The Federal Benefit Payment is $5000 of the initial check ($3000 for the October cycle and $2000 for the September cycle).

EXAMPLE 15.—TEACHERS ACCRUED BENEFIT

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 09/01/66
Separation date: 09/10/98
Department service: 32/00/10
.015 service: 5
.0175 service: 5
.02 service: 22
Average salary: $62,150.00
Total: $37,445.38
Total/month: $3,120.00
Sept 11–30: $2,080.00
Oct 1–31: $3,120.00
Nov 1–30: $3,120.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 09/01/66
Freeze date: 06/30/97
Department service: 30/10/00
.15 service: 5
.0175 service: 5
.02 service: 20.833333
Average salary: $62,150.00
Total: $35,995.21
Total/month: $3,000.00
Sept 11–30: $2,000.00
Oct 1–31: $3,000.00
Nov 1–30: $3,000.00

[FR Doc. 00–31249 Filed 12–11–00; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–00–131]

RIN 2115–AE46

Special Local Regulations: Fireworks Display, Smith Bay, Saint Thomas, USVI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being established for the Wyndham New Years Fireworks display in Smith Bay, St. Thomas, USVI. These regulations are needed to provide for the safety of life on navigable waters by excluding vessels from the fireworks launching area.

DATES: This rule is effective from 11 a.m. AST on December 31, 2000, to 1 a.m. AST on January 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of the docket CGD07–00–114 and are available for inspection or copying at Coast Guard Greater Antilles Section, La Puntilla, Old San Juan, PR 00902 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes, Greater Antilles Section at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for these regulations. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public and the marine event request was recently received. Further, we anticipate numerous spectator craft in the area where the fireworks will be launched.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger associated with storing and launching fireworks near spectator craft during the fireworks display. This rule creates a regulated area that will prohibit non-participating vessels from entering the regulated area during the event.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The regulated area will only be in effect for approximately 2 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect the following entities, some of which may be small enities: the owners or operators of vessels intending to transit or anchor in a portion of Smith Bay from 11 p.m. December 31, 2000, to 1 a.m. January 1, 2001. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the rule will only be in effect for 2 hours.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[MARINE EVENTS]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–131 to read as follows:

§ 100.35T–07–131; Fireworks display, Smith Bay, Saint Thomas, USVI.

(a) *Regulated Area.* A 1500-yard radius from position 18°20′27″ N, 064°51′18″ W, and encompassing all of Smith Bay, St. Thomas, USVI. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Greater Antilles Section, San Juan, Puerto Rico.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft may remain in a spectator area to be established by the event sponsor, Moonlight Fireworks, Inc.

(d) *Dates.* This rule is effective from 11 a.m. AST on December 31, 2000, to 1 a.m. AST on January 1, 2001.

Dated: December 1, 2000.

T.W. Allen,

U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–31643 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 07–00–116]

RIN 2115–AE46

Special Local Regulations: BellSouth Winterfest Boat Parade, Broward County, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being established for the annual BellSouth Winterfest Boat Parade. The event will be held on December 16, 2000, on the waters of the Port Everglades turning basin and the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach Day Beacon 74 (LLNR 47230). The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 5 p.m. to 11 p.m. EST on December 16, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 07–00–116 and are available for inspection and copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami, FL 33139, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Storey, Coast Guard Group Miami Florida at (305) 535–4472.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM would be contrary to national

safety interests since immediate action is needed to minimize potential danger to the public as there will be numerous spectator craft in the area. Moreover, the event is scheduled for December 16, 2000, and the permit request was only recently received.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The BellSouth Winterfest Boat Parade is an annual nighttime parade of approximately 110 pleasure boats ranging in length from 20 feet to 200 feet decorated with holiday lights. Approximately 1000 spectator craft are anticipated. The parade will form in the staging area at the Port Everglades turning basin and proceed North on the Intracoastal Waterway (ICW) to Lake Santa Barbara where the parade will disband. The regulated area includes the staging area and the parade route. The staging area encompasses the Port Everglades turning basin, North to Dania Sound Light 35 (LLNR 42865). The Parade route encompasses the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach day beacon 74 (LLNR 47230)

Anchoring is prohibited in the staging area. Anchoring is also forbidden in the vicinity of the viewing area which extends from the Sunrise Blvd Bridge, South to the New River Sound Light 3 (LLNR 47240) West of the ICW. During the parade transit, these regulations prohibit nonparticipating vessels from approaching within 500 feet ahead of the lead vessel or 500 feet astern of the last participating vessel in the parade, and within 50 feet on either side of the parade, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations at the discretion of the Patrol Commander.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be minimal because the regulated area will only be in effect for approximately 6 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the ICW between the Port Everglades turning basin and Lake Santa Barbara from 5 to 11 p.m. on December 16, 2000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for approximately 6 hours and the event will be highly publicized.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations for unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[MARINE EVENTS]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–116 to read as follows:

§ 100.35T–07–116; BellSouth Winterfest Boat Parade, Broward County, Ft. Lauderdale, FL

(a) *Definitions.*

(1) Staging area: The staging area is the Port Everglades Turning Basin and that portion of the Intracoastal Waterway extending form Port Everglades Turning Basin to Dania Sound light 35 (LLNR 42865).

(2) Parade Route: The parade route includes the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach Daybeacon 74 (LLNR 47230)

(3) Viewing area: The Viewing area extends from the Sunrise Blvd Bridge South to the New River Sound Light 3 (LLNR 47240) West of the ICW.

(4) Coast Guard Patrol Commander. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida. The Coast Guard assumes no responsibility for the operation of the event, the safety of participants and spectators, the safety of transient craft, and the qualification and instruction of participants. These responsibilities rest solely with the sponsor of the event.

(b) *Special Local Regulations.*

(1) Staging area: Entry or anchoring in the staging area by nonparticipating vessel is prohibited, unless authorized by the Patrol Commander.

(2) Parade route: During the parade transit, nonparticipating vessels are prohibited from approaching within 500 feet ahead of the lead vessel and 500 feet astern of the last participating vessel in the parade, and within 50 feet either side of the parade unless authorized by the Patrol Commander.

(3) Viewing Area: Anchoring in the vicinity of the viewing area is prohibited.

(4) Miscellaneous: A succession of not fewer that 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately. At the discretion of the Patrol Commander, all vessels may resume normal operations after the passage of the parade participants.

(d) *Effective date.* This section is effective from 5 p.m. to 11 p.m. EST on December 16, 2000.

Dated: December 1, 2000.

T.W. Allen,

U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–31644 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Sack Preparation Changes for Periodicals Nonletter-Size Mailing Jobs That Include Automation Flat Rate and Presorted Rate Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises the standards for preparation of Periodicals nonletter-size mailing jobs that include both an automation flats mailing and a Presorted flats mailing to require use of the co-sacking preparation method in Domestic Mail Manual (DMM) M910.

EFFECTIVE DATE: January 7, 2001.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, 703–292–3645.

SUPPLEMENTARY INFORMATION: On October 30, 2000, the Postal Service published for comment in the **Federal Register** (65 FR 64643) a proposed rule to require Periodicals mailers to prepare sacked mailing jobs of nonletter-size mail that include both an automation flats rate mailing and a Presorted rate mailing using the co-sacking preparation requirements in DMM M910.

This proposal was based on cost models that suggest that handling costs for Periodicals mail will be reduced if mailers are required to prepare their mail under new DMM M910. This preparation method will reduce the number of sacks prepared and handled, and concurrently increase the number of more finely presorted sacks. The anticipated reduction in Postal Service costs from requiring use of this preparation method was incorporated in the rates resulting from the R2000–1 rate case.

This rulemaking also reorganizes Domestic Mail Manual E200 and M200 to separate the eligibility and presort requirements for Periodicals Presorted rate mailings from those of carrier route mailings. DMM E200 will now contain section E220 that pertains only to Presorted rate mailings and section E230 that pertains only to carrier route mailings. (The information published in DMM E220 in the **Federal Register** proposed rule of August 29, 2000 (65 FR 52480), ''Proposed Changes to the Domestic Mail Manual to Implement Docket No. R2000–1,'' has been redesignated as DMM E217 in the final rule regarding that proposal.) DMM M200 will contain section M210 that pertains only to Presorted rate mailings and section M220 that pertains only to carrier route mailings. Under current standards, Presorted and carrier route are two separate mailings with separate eligibility requirements and separate packaging and sacking requirements. This reorganization does not change current requirements but reflects the separate mailing status of these two types of mailings. It also makes the DMM numbering for Periodicals consistent with the numbering system used for Standard Mail (A). The final rule also makes changes to E230 and M200 references contained throughout the DMM that appropriately change them to E220, M210, or M220 references, as appropriate.

As information, the DMM language in this final rule incorporates revisions to the DMM from three previously published **Federal Register** final rules that also will take effect January 7, 2001. These final rules are:

1. ''Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets'' published on July 28, 2000 (65 FR 46361).

2. ''Line-of-Travel Sequencing for Basic Carrier Route Periodicals'' published on July 28, 2000 (65 FR 46363).

3. ''Domestic Mail Manual Changes for Sacking and Palletizing Periodicals Nonletters and Standard Mail (A) Flats, for Traying First-Class Flats, and for Labeling Pallets'' published on August 16, 2000 (65 FR 50054).

Accordingly, the numbering and the language of the DMM sections in this final rule have been synchronized with those final rules and may not match the numbering and language in current DMM Issue 55.

Summary of Comments

The Postal Service received one in response to the proposed rule. This commenter who represents a mailing association expressed support for the new requirement.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U. S. C. 552(a); 39 U. S. C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

E Eligibility

* * * * *

E200 Periodicals

* * * * *

E211 All Periodicals

* * * * *

12.0 Documentation

[In E211.12.0, revise ''E230'' to read ''E220''.]

* * * * *

14.0 Basic Rate Eligibility

* * * * *

14.3 Adjustments and Discounts

[In E211.14.3, revise ''E230'' to read ''E220, E230''.]

* * * * *

[Add new E220 to read as follows:]

E220 Presorted Rates

[Add new summary to read as follows:]

Summary E220 describes the eligibility standards for mailing Presorted rate mailings (5-digit, 3-digit, and basic rates). It also describes combining multiple publications or editions.

[Add new 1.0 that copies information from E230 and deletes information pertaining to carrier route mail to read as follows:]

1.0 BASIC INFORMATION

1.1 Standards

The standards for Presorted rates are in addition to the basic standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M045, M200, M910, M920, M930, or M940. Not all combinations of presort level, automation, and destination entry discounts are permitted.

[Copy E230.1.2 as new E220.1.2 and amend to include references to new palletization options to read as follows:]

1.2 Palletized Mail

A correctly prepared package is the equivalent of a sack when palletized under M045, M920, M930, or M940. Individual pieces qualify for the presort level rate appropriate for the palletized packages in which they are placed, regardless of the destination of the pallet. Eligibility for destination entry or other zoned rates depends on the point of entry.

[Redesignate E230.1.3 as E220.1.3.]

1.4 Barcodes

[Copy E230.1.4 as E220.1.4 and amend by changing ''nonautomation'' to ''Presorted'' to read as follows:]

Any POSTNET barcode on a mailpiece in a Presorted Periodicals mailing must be correct for the delivery address and meet the standards in C840 and A950.

1.5 Documentation

[Copy E230.1.5 to E220.1.5 and amend by adding information on postage statements to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by standardized documentation meeting the basic standards in P012. Documentation of postage is not required if each piece in the mailing is of identical weight and the pieces are separated when presented for acceptance by rate, by zone (including separation by In-County and Outside-County rates), and by entry discount (*e.g.,* DDU and DSCF).

[Add new heading 2.0 to read as follows:]

2.0 RATES

[Redesignate E230.3.0 through E230.5.0 as E220.2.1, 2.2, and 2.3, respectively.]

2.1 5–Digit Rates

[In redesignated 2.1, change the reference ''M200'' to ''M210.'']

2.2 3-Digit Rates

[In redesignated 2.2, change the reference ''M200'' to ''M210.'']

2.3 Basic Rates

[In redesignated 2.3, change the reference ''M200'' to M210.'']

[Copy E230.7.0 as E220.3.0.]

[Revise the heading of E230 to read as follows:]

E230 Carrier Route Rates

[Amend the summary to exclude non-carrier route rates to read as follows:]

Summary E230 describes the eligibility standards for mailing at carrier route rates. It also describes combining multiple publications or editions.

1.0 BASIC INFORMATION

1.1 Standards

[Amend 1.1 to delete information on Presorted rate mail to read as follows:]

The standards for carrier route rates are in addition to the basic standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M045, M200, M910, M920, M930, or M940. Not all combinations of presort level, automation, and destination entry discounts are permitted.

[Amend 1.2 to include references to new palletization options to read as follows:]

1.2 Palletized Mail

A correctly prepared package is the equivalent of a sack when palletized under M045, M920, M930, or M940. Individual pieces qualify for the presort level rate appropriate for the palletized packages in which they are placed, regardless of the destination of the pallet. Eligibility for destination entry or other zoned rates depends on the point of entry.

[Redesignate the heading 2.1 as 1.3 and amend to read as follows:]

1.3 Carrier Route Code Accuracy

[Redesignate the text of 2.1 as 1.3 and amend to add references to the sequencing requirements to read as follows:]

Except for mailings prepared with a simplified address under A040, carrier route codes must be applied to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme, hard copy CRIS files, or another AIS product containing carrier route information, subject to A930 and A950. Carrier route information must be updated within 90 days before the mailing date. The applicable sequencing requirements in 2.2, 3.0, and M050 must also be met.

* * * * *

1.5 Documentation

[Amend 1.5 to add information on postage statement standards and to add a cross-reference to the documentation requirements in M050 for sequencing to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by standardized documentation meeting the basic standards in P012. Documentation of postage is not required if each piece in the mailing is of identical weight and the pieces are separated when presented for acceptance by rate, by zone (including separation by In-County and Outside-County rates), and by entry discount (e.g., DDU and DSCF). Documentation of sequencing and of density standards under M050 must be submitted with each mailing.

[Revise the heading of 2.0 (as set forth in the final rule published in 65 FR 50054, August 16, 2000), and add new heading 2.1 to read as follows:]

2.0 SORTATION AND SEQUENCING

2.1 Sortation

[Redesignate the contents of 2.2a (as set forth in the final rule published in 65 FR 50054, August 16, 2000) as 2.1a and b to separate letter mail standards from nonletter mail standards to read as follows:]

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M045, M200, or (nonletter-size mail only) M920, M930, or M940. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The carrier route rates for letter-size mail apply to copies that are prepared in carrier route packages of six or more pieces each that are sorted to carrier route, 5-digit carrier routes, or 3-digit carrier routes trays.

b. The carrier route rates for nonletter-size mail apply to copies of flat-size or irregular parcel-size pieces prepared in carrier route packages of six or more pieces each, and that are sorted to pallets under M045 or M920, M930, or M940, or sacked in carrier route, 5-digit scheme carrier routes, or 5-digit carrier routes sacks, and, if prepared under M920, merged 5-digit scheme sacks or merged 5-digit sacks. Preparation of 5-digit scheme carrier routes sacks or pallets is required and must be done for all 5-digit scheme destinations. Preparation of merged 5-digit sacks and merged 5-digit scheme sacks is optional but if performed must be done for all 5-digit ZIP Codes for which there is an ''A'' or ''C'' indicator in the City State Product that permits co-containerization of carrier route and 5-digit packages. Preparation of merged 5-digit pallets and merged 5-digit scheme pallets is optional but if performed must be done for all 5-digit ZIP Codes or 5-digit schemes for which those pallet levels are possible (under M920 if there is an ''A'' or ''C'' indicator in the City State Product, under M930 if the 5% threshold standard is met, and under M940 if ZIP Codes have an ''A'' or ''C'' indicator in the City State Product and if ZIP Codes with a ''B'' or ''D'' indicator in the City State Product meet the 5% threshold standards). For merged 5-digit scheme sacks or pallets, preparation also must be done for all 5-digit scheme destinations. The applicable sequencing requirements in M050 and in 2.2a or 2.2b also must be met.

[Amend the heading of 2.2 and redesignate 2.2b and c (as set forth in the final rule published in 65 FR 50054, August 16, 2000) as 2.2a and b, to read as follows:]

2.2 Sequencing Requirements

Carrier route mail must be prepared in delivery sequence as follows:

a. Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes as prescribed by the USPS (M050).

b. The high density and saturation rates apply to pieces that are eligible for carrier route rates under 2.1, are prepared in carrier walk sequence, and meet the applicable density standards in 3.0 for the rate claimed.

[Redesignate 6.0 (as set forth in the final rule published in 65 FR 50054, August 16, 2000) as 3.0; amend redesignated 3.1 by changing the reference ''2.2'' to ''1.0 and 2.0,'' by changing the reference ''M200'' to ''M220,'' and by changing the reference ''6.4'' to ''3.4''; amend redesignated 3.4 by changing all references to ''6.4'' to ''3.4.'']

[Redesignate 7.0 as 4.0.]

* * * * *

E250 Destination Entry

* * * * *

2.0 DDU RATE

2.1 Eligibility

[Change the references ''M200'' to ''M220.'']

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M050 Delivery Sequence

1.0 BASIC STANDARDS

1.1 General

[Change the reference ''M200'' to ''M220.'']

* * * * *

4.0 DOCUMENTATION

4.2 High Density

[In 4.2a and 4.2b, change the reference ''E230.6.4c'' to ''E230.3.4c.'']

M200 Periodicals (Nonautomation)

[Add new heading M210 to read as follows:]

M210 Presorted Rate Periodicals

[Redesignate the summary of M200 as the summary of M210 and amend to delete references to carrier route mail to read as follows:]

Summary: M200 describes the basic standards for Periodicals Presorted rate mailings including package and tray preparation for letters, and package and sack preparation for flats and irregular parcels. Additional requirements for preparing mail on pallets are in M041 and M045, or M041 and M920, M930, or M940. For standards on automation rate Periodicals mailings see E240 and M810 (letters) or M820 (flats), as applicable. For standards on carrier route mailings see E230 and M220.

[Redesignate M200.1.0 as M210.1.0.]

1.0 BASIC STANDARDS

[Revise heading and text of redesignated M210.1.1 for clarity and to exclude Presorted rate sacked nonletter-size mailings that contain an automation rate mailing to read as follows:]

1.1 Basic Standards

For all letter-size mailings, for sacked mailing jobs of nonletter-size mail that do not contain an automation rate mailing or a carrier route mailing, and for all palletized mailing jobs the following standards must be met for the Presorted rate mailing:

a. All pieces in each Presorted rate Periodicals mailing must be in the same processing category.

b. Letter-size pieces must be packaged under 2.0 and prepared in trays under 3.0. Trays prepared under this section may subsequently be palletized under M041 and M045.

c. Nonletter-size pieces must be packaged under 2.0. Packages placed on pallets must meet additional packaging criteria under M045.

d. Packages of nonletter-size pieces must be sacked or palletized under one of the following:

(1) Sacked under 4.0, except that a Presorted rate mailing that is part of a mailing job that also contains an automation flats mailing must be sacked under M910 or M920 as described in 1.2; or

(2) Palletized under M041 and M045, M920, M930, or M940.

e. Sacks prepared under 4.0 may subsequently be prepared on pallets under M041 and M045.

f. All pieces must be sorted together to the finest extent required under the applicable sortation standards described above.

g. Postmasters may authorize preparation of small mailings in nonpostal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

[Move redesignated M200.1.3 to M220 and redesignate as M220.1.3, change the

title from ''Basic Carrier Route and Walk Sequence'' to ''Sequencing Standards.'']

[Redesignate 1.2 as 1.3 and add new 1.2 to read as follows:]

1.2 Additional Standards for Nonletter Sacked Mailing Jobs Containing More Than One Mailing

The following standards apply:

a. Flats and irregular parcel mailings prepared in sacks that are part of a mailing job that contains a carrier route rate mailing, an automation flat rate mailing, and a Presorted rate mailing must be prepared under one of the following options: (1) The carrier route mailing must be prepared under E230 and M220 and the automation rate and Presorted rate mailings must be prepared under M910; or (2) all three mailings in the mailing job must be prepared under M920.

b. Flats and irregular parcel mailings prepared in sacks that are part of a mailing job that contain only an automation flats mailing under E240 and a Presorted rate mailing under E220 must be presorted under the co-sacking standards in M910.

c. Sacked mailing jobs that contain only a carrier route mailing and a Presorted rate mailing may be separately sacked under M210 and M220, or may be prepared using the merged sacking option under M920.

d. Sacked mailing jobs that contain only a carrier route mailing and an automation rate mailing may be separately sacked under M220 and M820, or may be prepared using the merged sacking option under M920.

* * * * *

1.3 Documentation

[Insert text of redesignated 1.3.]

1.4 Firm Packages

[Insert text of redesignated 1.4.]

1.5 Low-Volume Packages and Sacks

[Amend redesignated 1.5 to change internal references and to correct the names of applicable pallet levels to read as follows:]

As a general exception to 2.2a through 2.2c and 4.0a through 4.0d, nonletter-size Periodicals may be prepared in 5-digit and 3-digit packages containing fewer than six pieces when the publisher determines that such preparation improves service, provided those packages are placed in 5-digit, 3-digit, and SCF sacks. These low-volume packages may be placed on 5-digit scheme, 5-digit, 3-digit, and SCF pallets under M045, or on merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, or SCF pallets under M920, M930, and M940.

[Delete 1.6.]

[Redesignate 1.7 as 1.6 and amend by deleting ''or pallets'' from the end of the first sentence, by deleting ''sacks or'' from the end of the second sentence, by changing the section number references, and by adding a new last sentence to read as follows:]

1.6 Merged Palletization of Nonletter-Size Carrier Route, Automation Rate, and Presorted Rate Mail

Under the standards in M920, nonletter-size firm and 5-digit packages that are prepared under 1.0 and under 2.2a and 2.2b may be co-sacked with nonletter-size firm and carrier route packages prepared under M220 and with nonletter-size 5-digit packages at automation rates prepared under M820 in merged 5-digit sacks and in merged 5-digit scheme sacks. Under the standards in M920, M930, or M940, nonletter-size firm and 5-digit packages that are prepared under 1.0, 2.2a, and 2.2b may be copalletized with nonletter-size firm and carrier route packages prepared under M220 and with nonletter-size 5-digit packages at automation rates prepared under M820 on merged 5-digit pallets and on merged 5-digit scheme pallets. See 1.2a for information on when preparation under M920 may be required.

2.0 PACKAGE PREPARATION

2.1 General

Package preparation is subject to M020 and the specific standards below.

[Delete 2.2 and 2.3; redesignate 2.4 as 2.2 and amend to delete information on carrier route packages to read as follows:]

2.2 Package Preparation

Package size, preparation sequence, and labeling:

a. Firm: optional (two-piece minimum); blue Label F or optional endorsement line (OEL).

b. 5-digit: required (six-piece minimum, fewer not permitted except under 1.5); red Label D or OEL; labeling optional for mail placed in full 5-digit trays.

c. 3-digit: required (six-piece minimum, fewer not permitted except under 1.5); green Label 3 or OEL.

d. ADC: required (six-piece minimum, fewer not permitted); pink Label A or OEL.

e. Mixed ADC: required (no minimum); tan Label MXD or OEL.

[Redesignate 3.0 as 4.0 and redesignate 4.0 as 3.0, amend redesignated 3.0 and 4.0, respectively, by consolidating former subsections into a single section for trays and a single section for sacks to read as follows:]

3.0 TRAY PREPARATION (LETTER-SIZE PIECES)

Tray size, preparation sequence, and labeling (Line 1 and 2):

a. 5-digit: required at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''LTRS 5D NON BC.''

b. 3-digit: required at 24 pieces (no minimum for required origin/optional entry 3-digit(s)), optional with one six-piece package minimum.

(1) Line 1: use L002, Column A.

(2) Line 2: ''LTRS 3D NON BC.''

c. ADC: required at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use L004.

(2) Line 2: ''LTRS ADC NON BC.''

d. Mixed ADC: required (no minimum).

(1) Line 1: use ''MXD'' followed by the city/state/ZIP of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004.

(2) Line 2: ''LTRS NON BC WKG.''

4.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

For mailing jobs that also contain an automation rate mailing see 1.2 and M910 or M920. For other mailing jobs, the following are the sack size, preparation sequence, and lines 1 and 2 labeling:

a. 5-digit: required at 24 pieces, optional with one six-piece package minimum except under 1.5.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''PER'' or NEWS,'' as applicable, followed by ''FLTS'' or ''IRREG,'' as applicable, and ''5D NON BC.''

b. 3-digit: required at 24 pieces, optional with one six-piece package minimum except under 1.5.

(1) Line 1: use L002, Column A.

(2) ''PER'' or ''NEWS,'' as applicable, followed by ''FLTS'' or ''IRREG,'' as applicable, and ''5D NON BC.''

c. SCF: required at 24 pieces, optional with one six-piece package minimum except under 1.5.

(1) Line 1: use L002, Column C.

(2) Line 2: ''PER'' or ''NEWS,'' as applicable, followed by ''FLTS'' or ''IRREG,'' as applicable, and ''SCF NON BC.''

d. Origin/entry SCF: required for the SCF of the origin (verification) office, optional for the SCF of an entry office

other than the origin office, (no minimum); for Line 1 use L002, Column C.

(1) Line 1: use L002, Column C.

(2) Line 2: ''PER'' or ''NEWS,'' as applicable, followed by ''FLTS'' or ''IRREG,'' as applicable, and ''SCF NON BC.''

e. ADC: required at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use L004.

(2) Line 2: ''PER'' or ''NEWS,'' as applicable, followed by ''FLTS'' or ''IRREG,'' as applicable, and ''ADC NON BC.''

f. Mixed ADC: required (no minimum).

(1) Line 1: use ''MXD'' followed by the city/state/ZIP of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004.

(2) Line 2: ''PER'' or ''NEWS,'' as applicable, followed by ''FLTS'' or ''IRREG,'' as applicable, and ''NON BC WKG.''

* * * * *

[Add new M220 to read as follows:]

M220 Carrier Route Periodicals Mail

Summary M220 describes the basic standards for Periodicals carrier route mailings including package and tray preparation for letters, and package and sack preparation for flats and irregular parcels. Additional requirements for preparing mail on pallets are in M041 and M045, or M041 and M920, M930, or M940. For standards on automation rate Periodicals mailings see E240 and M810 (letters) or M820 (flats), as applicable. For standards on Presorted rate mailings see E220 and M210.

1.0 BASIC STANDARDS

1.1 General Preparation Standards

The following standards must be met for carrier route mailings:

a. All pieces in each carrier route Periodicals mailing must be in the same processing category.

b. Letter-size pieces must be packaged under 2.0 and prepared in trays under 3.0. Trays prepared under this section may subsequently be palletized under M041 and M045.

c. Nonletter-size pieces must be packaged under 2.0. Packages placed on pallets must meet additional packaging standards under M045.

d. Packages of nonletter-size pieces must be sacked or palletized under one of the following:

(1) sacked under 4.0 or, if eligible, under M920; or

(2) palletized under M041 and M045, M920, M930, or M940.

e. Sacks prepared under 4.0 may subsequently be prepared on pallets under M041 and M045.

d. All pieces must be sorted together to the finest extent required under the applicable sortation standards described above.

e. Postmasters may authorize preparation of small mailings in non-postal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

[Copy former M200.1.2 as M210.1.2 and add the following as the last sentence:]

1.2 Documentation

* * * Documentation of sequencing and of density standards under M050 must be submitted with each mailing.

[Change the title of redesignated 1.3 from ''Basic Carrier Route and Walk Sequence'' to ''Sequencing Standards.'']

[Copy former M200.1.4 as M220.1.4.]

1.5 Low-Volume Packages and Sacks

As a general exception to 2.4b and 4.0b and 4.0c, nonletter-size Periodicals may be prepared in carrier route packages containing fewer than six pieces when the publisher determines that such preparation improves service, provided those packages are placed in 5-digit scheme carrier routes, or 5-digit carrier routes sacks. Low-volume carrier route packages prepared under DMM M920 may also be placed in merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, and 5-digit carrier routes sacks. These low-volume packages also may be placed on 5-digit scheme carrier routes, 5-digit carrier routes, 3-digit, and SCF pallets under M045, or on merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, 5-digit carrier routes, 3-digit and SCF pallets under M041 and M920, M930, or M940.

[Copy current M200.1.7 as M220.1.6 and amend by deleting ''or pallets'' from the end of the first sentence, by adding a new second sentence, by deleting ''sacks or'' from the end of the third sentence, and by changing the section number references, to read as follows:]

1.6 Merged Containerization of Nonletter-Size Carrier Route, Automation Rate, and Presorted Rate Mail

Under the standards in M920, nonletter-size firm and carrier route packages that are prepared under 1.0 and 2.4 may be co-sacked with nonletter-size 5-digit packages at Presorted rates prepared under M210 and with nonletter-size 5-digit packages at automation rates prepared under M820 in merged 5-digit sacks and in merged 5-digit scheme sacks or pallets. For sacked mailing jobs of nonletters that contain an automation and a Presorted rate mailing as well as a carrier route mailing, mailers are required to prepare the automation and Presorted rate mailings under M910 (see M210.1.2a) and prepare the carrier route mailing under M220, unless they elect to prepare the mailings under M920. Under the standards in M920, M930, or M940, nonletter-size firm and carrier route packages that are prepared under 1.0 and 2.4 may be copalletized with nonletter-size 5-digit packages at Presorted rates prepared under M210 and with nonletter-size 5-digit packages at automation rates prepared under M820 on merged 5-digit pallets and on merged 5-digit scheme pallets.

2.0 PACKAGE PREPARATION

2.1 General

Package preparation is subject to M020 and the specific standards below.

2.2 Optional Higher Package Minimums

A mailer may choose to prepare carrier route packages at a higher level of route saturation (for example, only if there are at least 15 pieces per route). Under this option, smaller groups of six or more pieces per carrier route not prepared in carrier route packages for carrier route rates must be prepared for and paid at another applicable rate.

2.3 Walk-Sequence Identification

In addition to the package label showing carrier route type and number under 2.4, each package of Periodicals walk-sequence mail must show that the mail is walk sequenced and the level of sequencing. A facing slip with the phrase ''HIGH DENSITY WALK-SEQUENCED CARRIER ROUTE MAIL'' or ''SATURATION WALK-SEQUENCED CARRIER ROUTE MAIL'' (as applicable) may be placed on the top of each package of walk-sequence mail. It may be an address label with the required information placed on a sample mailpiece that is the top piece in the package, or a slip of paper affixed to the top of the package. If packages are prepared without facing slips, an optional endorsement line or carrier route information line must be placed on each piece in the package to provide the equivalent information.

2.4 Package Preparation

Package size, preparation sequence, and labeling:

a. Firm: optional (two-piece minimum); blue Label F or optional endorsement line (OEL). s

b. Carrier route: optional but required for rate eligibility (six-piece minimum, fewer not permitted except under 1.5); labeling required except for packages placed in a direct carrier route tray or sack (facing slip, OEL, or CR information line).

3.0 TRAY PREPARATION (LETTER-SIZE PIECES)

Tray size, preparation sequence, and Line 1 and 2 labeling:

a. *Carrier route:* required for rate eligibility at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''PER'' or ''NEWS,'' as applicable, followed by ''LTRS,'' followed by ''WSS'' for saturation rate mail, or ''WSH'' for high density rate mail, or ''CR'' for basic rate mail, and followed by the route type and number.

b. *5-digit carrier routes:* required for rate eligibility if full tray, optional with minimum one six-piece package.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''PER'' or ''NEWS,'' as applicable, followed by ''LTRS CR–RTS.''

c. *3-digit carrier routes:* optional with minimum one six-piece package for each of two or more 5-digit areas.

(1) Line 1: use the city/state/ZIP shown in L002, Column A that corresponds to the 3-digit ZIP Code prefix of packages.

(2) Line 2: ''PER'' or ''NEWS,'' as applicable, followed by ''LTRS 3D CR–RTS.''

4.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

Sack size, preparation sequence, and Line 1 and 2 labeling:

a. *Carrier route:* required for rate eligibility at 24 pieces, fewer pieces not permitted.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS'' or ''IRREG'' as applicable, followed by ''CR–RTS.''

[Copy current M200.5.0 and add as M220.5.0.]

[Copy current M200.6.0 and add as M220.6.0.]

* * * * *

M800 All Automation Mail

M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

1.8 Exception—Periodicals Preparation

[Amend 1.8 by replacing the last sentence with the following:]

These low-volume packages may be placed on 5-digit scheme, 5-digit, 3-digit, and SCF pallets under M041 and M045, or on merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF pallets under M041 and either M920, M930, or M940. They may also be placed in merged 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF sacks prepared under M920.

1.9 Co-Traying, Co-Sacking, or Copalletizing with Presorted Rate Mail

Packages of First-Class and Standard Mail (A) prepared under 1.0 and either 2.1 or 4.1, as applicable, may be co-trayed or co-sacked with Presorted rate mail that is part of the same mailing job and mail class at all levels of tray or sack under the provisions of M910. For sacked mailings of Periodicals nonletters, packages of Periodicals automation flats mail prepared under 1.0 and 3.1 that are part of the same mailing job as a Presorted rate mailing of nonletters must be co-sacked under M910, unless the mailing job also contains a carrier route mailing and is eligible for and prepared under M920. See M210.

* * * * *

3.0 PERIODICALS

* * * * *

3.2 Sack Preparation

[Revise the first sentence of 3.2 to read as follows:]

For mailing jobs that also contain a Presorted rate mailing see 1.9 and M910. For other mailing jobs, the following are the sack size, preparation sequence and line 1 labeling: * * *

* * * * *

M900 Advanced Preparation Options

[Amend the heading M910 to read as follows:]

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Rate Flats-Mailings

* * * * *

2.0 PERIODICALS

2.1 Basic Standards

[Amend 2.1d and 2.1e by replacing ''E230'' with ''E220.'']

* * * * *

2.2 Package Preparation

[Amend 2.2 by replacing ''M200'' with ''M210.'']

2.3 Low-Volume Packages in Sacks or on Pallets

[Amend 2.3 by replacing ''M200'' with ''M210'' and by replacing ''M200.1.4'' with M210.1.4.]

* * * * *

[Amend the heading of M920 to read as follows:]

M920 Merged Containerization of Flats Packages Using the City State Product

* * * * *

1.0 PERIODICALS MAIL

1.1 Basic Standards

[Amend 1.1g, 1.1h, and 1.1i to change the reference numbers to read as follows:]

Carrier route packages of nonletter-size pieces in a carrier route rate mailing may be placed in the same sack or on the same pallet (a merged 5-digit sack or pallet, or a merged 5-digit scheme sack or pallet) as nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing under the following conditions:

* * * * *

g. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E220.

h. For sacked mailings, the rates for pieces in the carrier route mailing are based on the criteria in E230, the rates for pieces in the automation rate mailing are applied based on the number of pieces in the package and the level of package to which they are sorted under E240, and the rates for pieces in the Presorted rate mailing are based on the number of pieces in the package and the level of sack to which they are sorted under E220.

i. For palletized mailings, the rates are based on the level of package and the number of pieces in the package under E220, E230, and E240.

* * * * *

1.2 Package Preparation

[Amend 1.2a to reflect new reference numbers to read as follows:]

Packages must be prepared as follows:

a. Sacked Mailings. The carrier route mailing must be packaged and labeled under M220. The automation rate mailing must be packaged and labeled under M820. The Presorted rate mailing must be packaged and labeled under M210.

* * * * *

1.3 Low-Volume Packages in Sacks or on Pallets

[Amend 1.3 to reflect new reference numbers to read as follows:]

Carrier route and 5-digit packages prepared under M210, M220, and M820 that contain fewer than six pieces must be placed in sacks under 1.4a through 1.4f or in 3-digit and SCF sacks under 1.4g, or on pallets under 1.5a through 1.5h, when the publisher determines that such preparation improves service. Pieces in such low-volume packages must claim the applicable basic rate, except that, as provided under M210.1.4 and M220.1.4, some firm packages may be eligible for carrier route rates and for 5-digit and 3-digit Presorted rates.

1.4 Sack Preparation and Labeling With Scheme Sort

[Change the reference ''M200.3.0'' to ''M210.4.0.'']

* * * * *

[Amend the heading M930 to read as follows:]

M930 Merged Palletization of Flats Packages Using a 5% Threshold

* * * * *

1.0 PERIODICALS MAIL

1.1 Basic Eligibility Requirements

[Amend 1.1f, 1.1g, and 1.1k to change the reference numbers to read as follows:]

Nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet or a merged 5-digit scheme pallet) as carrier route packages of nonletter-size pieces in a carrier route rate mailing under the following conditions:

* * * * *

f. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E220.

g. The rates are based on the level of package and the number of pieces in the package under E220, E230, and E240.

* * * * *

k. Portions of the mailing job that cannot be palletized must be prepared in sacks under M210, M220, M820, M910, or M920.

* * * * *

1.3 Low-Volume Packages on Pallets

[Amend 1.3 by changing ''M200'' to ''M210, M220.'']

1.4 5% Threshold Standard

[Amend 1.4f to reflect new reference numbers to read as follows:]

Mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme or merged 5-digit pallet under 1.5 if all of the following conditions are met:

* * * * *

f. Copies in firm packages claimed as one piece for rate purposes will be considered a single piece when performing the 5% limit calculation under 1.4a through 1.4d. As provided in M210.1.4 and M220.1.4, some firm packages claimed as one piece may be eligible for carrier route rates, 5-digit rates, or basic rates. The sortation level of each firm piece (package) for purposes of applying the 5% limit will be considered to be carrier route if the firm piece (package) is eligible for the carrier route rate under M220.1.4. Otherwise the firm package will be considered to be a 5-digit sorted piece (even if the basic rate must be paid on that piece).

* * * * *

[Amend the heading M940 to read as follows:]

M940 Merged Palletization of Flats Packages Using the City State Product and a 5% Threshold

1.0 PERIODICALS MAIL

1.1 Basic Standards

[Amend 1.1g, 1.1h, and 1.1l to change the reference numbers to read as follows:]

Nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet or a merged 5-digit scheme pallet) as carrier route packages of nonletter-size pieces under the following conditions:

* * * * *

g. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E220.

h. The rates are based on the level of package and the number of pieces in the package under E220, E230, and E240.

* * * * *

l. Portions of the mailing job that cannot be palletized must be prepared in sacks under M210, M220, M820, M910, or M920.

* * * * *

1.3 Low-Volume Packages on Pallets

[Amend 1.3 by changing ''M200'' to ''M210, M220.'']

1.4 5% Threshold Standard

[Amend 1.4f to reflect new reference numbers to read as follows:]

For 5-digit ZIP Codes with a ''B'' or ''D'' indicator in the City State Product, mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme or merged 5-digit pallet under 1.5 if all of the following conditions are met:

* * * * *

f. Copies in firm packages claimed as one piece for rate purposes will be considered a single piece when performing the 5% limit calculation under 1.4a through 1.4d. As provided in M210.1.4 and M220.1.4, some firm packages claimed as one piece may be eligible for carrier route rates, 5-digit rates, or basic rates. The sortation level of each firm piece (package) for purposes of applying the 5% limit will be considered to be carrier route if the firm piece (package) is eligible for the carrier route rate under M220.1.4. Otherwise the firm package will be considered to be a 5-digit sorted piece (even if the basic rate must be paid on that piece).

* * * * *

This change will be published in a future issue of the Domestic Mail Manual. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–31360 Filed 12–11–00; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 207

[Docket No. MARAD–2000–8464]

RIN 2133–AB43

Statistical Data for Use in Operating-Differential Subsidy Application Hearings

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is removing Part 207—Statistical Data for Use in Operating-Differential Subsidy Application Hearings (part 207). Statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the operating-differential subsidy (ODS) program. Moreover, Congress withdrew MARAD's authority to grant new ODS contracts.

DATES: This final rule is effective on December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Fitzgerald, Office of Insurance and Shipping Analysis, (202) 366–2400. You may send mail to Mr. Fitzgerald at Maritime Administration, Office of Insurance and Shipping Analysis, Room 8117, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

This final rule is a result of a review of our regulations pursuant to Executive Order 12866 Regulatory Planning and Review and the Department of Transportation's Regulatory Policies and Procedures. Both directives require review of our existing regulations to determine whether they need to be revised or removed. We are removing part 207 because it is no longer necessary. Statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the ODS program (46 App. U.S.C. 1185a). We find good cause under 5 U.S.C. 553(b) of the Administrative Procedure Act to forgo notice and public comment because these procedures would be impracticable and unnecessary. We also find good cause to make this rule effective upon the date of publication as it presents no substantive issue.

The Merchant Marine Act of 1936, as amended (the Act), established various programs aimed at fostering and maintaining a U.S. merchant marine capable of meeting the needs of U.S. commerce and national defense. One of the key programs under the Act was the payment of ODS to qualified U.S.-flag shipping companies for the operation of ships in essential foreign commerce for the United States. This program sought to equalize the disparity in operating costs between American ships and their foreign competitors relative to wages of officers and crews, insurance, and maintenance and repairs not covered by insurance.

Part 207 identified the basic statistical data and reports required by the Maritime Subsidy Board in hearings held under section 605(c) of the Act for ODS applications and provided procedures for the production of these data and reports. The ODS program largely expired at the end of 1997 and was replaced by the Maritime Security Program (MSP) authorized in the Maritime Security Act of 1996 (46 App. U.S.C. 1185a; 1187 *et seq.*).

We are removing part 207 because statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the ODS program. The statistical data were used in hearings to determine if existing U.S.-flag service was adequate. Moreover, Congress withdrew MARAD's authority to grant new ODS contracts.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this final rule is not likely to result in an annual effect on the economy of $100 million or more. This rulemaking removes Part 207—Statistical Data for Use in Operating-Differential Subsidy Application Hearings. Statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the ODS program.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities. This final rule removes Part 207—Statistical Data for Use in Operating-Differential Subsidy Application Hearings from the Code of Federal Regulations in compliance with statutory changes of the Maritime Security Act of 1996 which provided that a hearing process would no longer apply to the ODS program. Statistical data was used in hearings to determine if existing U.S.-flag service was adequate. Adequacy is no longer a criterion for granting ODS contracts. Moreover, Congress has withdrawn MARAD's authority to grant new ODS contracts. Therefore, MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Plain Language

Executive Order 12866 and the President's memorandum on plain language in government writing of June 1, 1998, require each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, we have written this final rule in plain language to provide easier understanding. Our goal is clarity, and we invite your comments on how to make this final rule easier to understand.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (''MAO'') 600–1, ''Procedures for Considering Environmental Impacts'', 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this final rule is not required. This final rule removes 46 CFR part 207.

Executive Order 13084

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded

Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This final rule does not contain information collection requirements covered by 5 CFR part 1320 requiring OMB approval.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in CFR Part 207

Administrative practice and procedure, Economic statistics, Grant programs-transportation.

Accordingly, under the authority of 46 App. U.S.C. 1114, 46 App. U.S.C. 1171 *et seq.*, and as discussed in the preamble, MARAD amends 46 CFR Chapter II by removing part 207.

Dated: December 6, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–31528 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000511133-0330-03; I.D. 120999B]

RIN 0648-AN52

Atlantic Highly Migratory Species Fisheries; Implementation of ICCAT Recommendations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations governing the Atlantic swordfish fishery to reduce the annual landings quota for the north Atlantic swordfish stock to 2,219 metric tons (mt) dressed weight (dw) for each of the next 3 fishing years (2000, 2001, 2002), with 300 mt dw allocated for incidental catch and the remainder allocated equally to each of the two semi-annual seasons for the directed fishery (June 1 through November 30 and December 1 through May 31). This final rule also establishes an allowance for dead discards of 320 mt whole weight (ww) in 2000, 240 mt ww in 2001, and 160 mt ww in 2002. Dead discards in excess of the allowance will be deducted from the subsequent year's landings quota. Additionally, NMFS is taking several actions regarding import restrictions: Removing a prohibition on the importation of Atlantic bluefin tuna from Panama; prohibiting the importation of BFT and its products from Equatorial Guinea; and prohibiting the importation of Atlantic swordfish and its products from Belize and Honduras.

The intent of these actions is to improve conservation and management of the Atlantic swordfish and BFT, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: All provisions of this final rule are effective January 11, 2001.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA) supporting this action may be obtained from Rachel Husted, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, 301-713-2347; fax: 301-713-1917 or by email at rachel.husted@noaa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery and the BFT fishery are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT. This final rule is based on two proposed rules, both published on May 24, 2000. One of the proposed rules described the proposed changes in trade restrictions (65 FR 33517) while the other described the proposed quotas associated with the rebuilding program for north Atlantic swordfish (65 FR 33519). The contents of the two proposed rules were combined in the development of this final rule.

Swordfish Rebuilding Program

According to the 1999 ICCAT stock assessment, the biomass of the north Atlantic swordfish stock at the beginning of 1999 was estimated to be at 65 percent of that needed to produce maximum sustainable yield (MSY). The biomass associated with MSY is the target stock size of the rebuilding program for north Atlantic swordfish. The 1998 fishing mortality rate was estimated to be 1.34 times the rate needed to produce MSY. Because NMFS is committed to rebuilding north Atlantic swordfish, consistent with the recent ICCAT 10-year rebuilding program and the requirements of the Magnuson-Stevens Act, immediate reductions in landings are necessary to rebuild the stock to levels that would support MSY.

North Atlantic swordfish landings for all nations combined for 1998 were estimated to be 12,175 mt ww. At the November 1999 ICCAT meeting, a recommendation was adopted to establish a 10-year rebuilding program for north Atlantic swordfish and to reduce the total allowable catch for all countries fishing on that stock to 10,600 mt ww (7,970 mt dw) for 2000; 10,500 mt ww (7,895 mt dw) for 2001; and 10,400 mt ww (7,820 mt dw) for 2002. Although the ICCAT recommendation specifies the quota in whole weight, this document refers to the landings quotas in dressed weight (dw = 0.7519 ww) for the purposes of monitoring U.S. harvests, as swordfish are processed at sea and landed in dressed form (head, fins, viscera and tails removed). This final rule implements the ICCAT recommendations for rebuilding north Atlantic swordfish.

Under the ICCAT recommendation, the United States is allocated 29 percent of the North Atlantic swordfish landings quota (total allowable catch minus the total dead discard allowance) for major harvesting nations in 2000, 2001, and 2002. This amounts to 2,951 mt ww for each year and represents a 5 percent decrease from the U.S. landings quota recommended by ICCAT for 1998. Consistent with the HMS FMP, the annual quota is divided between a directed fishery quota and an incidental quota (1,919 mt dw directed, 300 mt dw incidental). The directed fishery quota of 1,919 mt dw is divided equally into two semi-annual quotas: June 1 - November 30 and December 1 - May 31

(959.5 mt dw for each semi-annual season). The incidental quota allows for landings of swordfish taken incidental to other fisheries such as the highly migratory species (HMS) recreational fishery or the pelagic longline fishery for tunas.

In addition to the landings quota, ICCAT allocated to the United States 80 percent of the dead discard allowance (i.e., the U.S. share is 320 mt ww in 2000, 240 mt ww in 2001, and 160 mt ww in 2002). The dead discard allowance is to be phased out by 2004. The United States will deduct any amount over its dead discard allowance from the U.S. landings quota in the following year. If the United States discards less than its share of the dead discard allowance, the remainder will be added to the total quota available for all fishing nations in subsequent years, and will be reallocated by ICCAT.

In 1998, the United States reported discarding 433 mt ww of dead swordfish in the North Atlantic Ocean. Assuming dead discards occur in proportion to landings, dead discards in 2000 might decrease to 411 mt ww commensurate with the 5 percent decrease in landings quota (i.e., 5 percent less than 433 mt reported for 1998). This would result in an expected overharvest of the 2000 dead discard allowance by 91 mt ww. If discard rates remain proportional to the adjusted quota in 2001 and 2002, the dead discard allowance would be exceeded by 158 and 230 mt ww, respectively. These overages would require further reductions in the landings quotas and, combined with the initial landings quota reduction recommended by ICCAT (5 percent), might result in an actual decrease in landings of up to 10 percent by 2002 if the rate of discarding is not reduced (refer to the EA/RIR/FRFA for more details). However, on August 1, 2000, NMFS published a final rule intended to reduce dead discards of swordfish through time/area closures (65 FR 47214). If the time/area closures are effective, they will mitigate to some extent the effects of phasing out the dead discard allowance.

These regulatory changes will further ICCAT's international management objectives for the Atlantic swordfish fishery. NMFS has evaluated the annual quota and the dead discard allowance in accordance with the procedures and factors specified in 50 CFR 635.27(c)(3), and has determined that these measures are consistent with the latest stock assessment and recommendations of ICCAT.

Import Restrictions

On August 21, 1997 (62 FR 44422), NMFS implemented a 1996 ICCAT recommendation to prohibit the importation of BFT and its products from Panama, Honduras, and Belize. At that time, vessels of those countries had been determined by ICCAT to be fishing in a manner inconsistent with ICCAT conservation and management measures for BFT. In recognition of Panama's new status as a Contracting Party to ICCAT and the steps that country has taken and is taking to control its fleet and address ICCAT's concerns, ICCAT recommended in 1999 that its members lift the trade ban on BFT products from Panama. Therefore, consistent with the 1999 ICCAT recommendation, this final rule lifts the BFT import restriction with respect to Panama.

In contrast to the efforts of the Government of Panama, information available to ICCAT indicates that Honduras and Belize continue to have vessels fishing in a manner that diminishes the effectiveness of ICCAT's conservation and management measures for both BFT and Atlantic swordfish. (Background on the original determination can be found at 62 FR 44422, August 21, 1997.) In recent years, significant increases in exports of swordfish by Belize and Honduras have been recorded, although no swordfish catch data have been reported to ICCAT. This increased activity is occurring while other countries have reduced their catches of swordfish to comply with ICCAT conservation measures for the overfished North Atlantic swordfish population. ICCAT has repeatedly contacted the governments of Belize and Honduras but has not received a satisfactory response from either government regarding actions to rectify the situation. Therefore, consistent with the 1999 ICCAT recommendation, NMFS prohibits the importation of Atlantic swordfish and its products from Honduras and Belize. The prohibition on imports of BFT and its products from these countries also remains in effect.

In 1999, ICCAT also recommended that its members prohibit imports of BFT from Equatorial Guinea (a Contracting Party to ICCAT). ICCAT took this step as a last resort to address non-compliance with BFT catch quota limits. Import data from Japan for the years 1997-1999 reveal significant exports of BFT by Equatorial Guinea despite the fact that, for those years, this country received no BFT catch allocation from ICCAT. The Government of Equatorial Guinea has not responded to repeated correspondence from ICCAT regarding the BFT fishing activities of its vessels and Equatorial Guinea has reported no BFT catch data. Therefore, consistent with the 1999 ICCAT recommendation, NMFS prohibits the importation of BFT and its products from Equatorial Guinea.

Other ICCAT Issues

ICCAT adopted a number of other recommendations and resolutions at the 1999 meeting that will not require rulemaking, but will require management action on the part of NMFS. These include a recommendation reiterating the limitation on fishing capacity of commercial vessels fishing for Northern albacore, and a recommendation calling for the United States to endeavor to limit its total catch of southern albacore to no more than 4 percent by weight of its total catch of south Atlantic swordfish. Several other recommendations include provisions that request Contracting Parties to provide catch data or information related to fishing vessel registration. ICCAT also adopted a non-binding resolution encouraging all parties to participate actively in efforts to combat illegal, unregulated and unreported fishing. NMFS intends to implement these measures through non-regulatory actions and will provide ICCAT with all available information that has been requested by ICCAT.

Summary

NMFS will implement ICCAT's 1999 recommendation of a North Atlantic swordfish U.S. quota of 2,219 mt dw for each year 2000, 2001, and 2002. The U.S. landings quota will remain constant for 2000, 2001, and 2002, but it is subject to adjustment between years (consistent with ICCAT recommendations) if the directed or incidental quotas are exceeded or underharvested, or if the dead discard allowance is exceeded.

Consistent with the HMS FMP, the directed fishery quota of 1,919 mt dw is divided equally into two semi-annual quotas: June 1 - November 30 and December 1 - May 31 (959.5 mt dw for each season). Any cumulative overharvest/underharvest that occurs during any year would then be subtracted from/added to the following year's quota, consistent with the ICCAT recommendations.

In addition, this final rule establishes a dead discard allowance. Any discards in excess of the dead discard allowance will be subtracted from the directed quota for the following year.

NMFS prohibits the importation of BFT from Equatorial Guinea, extends

the import prohibition on BFT from Honduras and Belize to include an import prohibition on Atlantic swordfish, and lifts the prohibition on BFT imports from Panama.

Comments and Responses

NMFS held public hearings in June-July 2000 to receive comments from fishery participants and other members of the public regarding the proposed regulations. One written comment was submitted to NMFS during the 60-day comment period. Responses to specific comments are provided according to subject.

North Atlantic Swordfish Rebuilding Program

Comment 1: U.S. pelagic longline fishermen support the recommended quota reduction to achieve rebuilding for North Atlantic swordfish. However, this support is based on the presumption that all other countries harvesting in the Atlantic will comply with the rebuilding program. The conservation contributions of U.S. fishermen must not be undermined by the non-compliance of other parties fishing in the Atlantic.

Response: The United States has taken a leading role in ensuring compliance by ICCAT members and cooperation by non-members with the conservation and management measures of ICCAT. NMFS will continue to advocate for the full implementation of these measures by all parties. According to the compliance recommendations that have been adopted by ICCAT, continued violation of quotas can result in deductions from a party's quota and/or trade measures.

Comment 2: The dead discard allowance penalizes U.S. and Canadian fishermen for their honest reporting of dead discards that result from a zero tolerance for undersized fish. Other nations continue to land undersized swordfish in excess of their 15 percent tolerance level. If other countries continue to violate the minimum-size restrictions, ICCAT should eliminate the minimum size and instead recommend hot-spot closures in all appropriate Atlantic areas to accomplish the goal of protecting juvenile swordfish.

Response: NMFS is aware that some other nations harvest small swordfish in excess of the allowed tolerance level. To discourage this practice, the United States has taken steps to eliminate the sale of undersized swordfish in the U.S. market. In addition, the United States supported an ICCAT resolution adopted in 1999 that requests the Standing Committee on Research and Statistics (SCRS) to analyze possible times and areas for international closures to protect small swordfish. The SCRS will also conduct the necessary studies to determine whether modifications in longline gear configurations can reduce catches of undersized swordfish. A report on these findings will be presented in November 2002. At that time, alternatives to the minimum size may be considered.

Comment 3: Handgear permits issued under the limited access program have created a new directed fishery on the east coast of Florida and the Gulf of Mexico, areas that have been identified as juvenile swordfish hot-spots. This additional source of mortality in areas that are closed to pelagic longline vessels could threaten the effectiveness of the swordfish rebuilding program.

Response: It is likely that small swordfish taken by handgear can be released alive. NMFS intends to monitor catches and dead discards in this sector of the fishery, and will take additional steps to reduce mortality on juvenile swordfish as necessary.

Comment 4: There is no need for 300 mt dw to be set aside for the incidental quota. This allocation could result in unnecessary closures toward the end of the first semi-annual season, which is a critical time for fishermen on the Grand Banks.

Response: Recent action to establish limited access permits for the directed and incidental swordfish fisheries together with the implementation of time/area closures may affect the distribution of catch and effort in the directed and incidental categories. Depending on the accumulated catch in each category, NMFS may reconsider the distribution of quota. In the interim, NMFS will attempt to avoid directed fishery closures whenever possible through in-season transfers as allowed under the regulations.

Import Restrictions

Comment 6: The proposed import restrictions are not an effective means of enforcing compliance with ICCAT's conservation and management program. In some cases, we do not import swordfish or BFT from identified countries.

Response: NMFS recognizes that the United States does not currently have significant imports from the identified countries. However, NMFS believes that it is important to adopt these measures in order to provide multilateral support for countries like Japan that do import fish from these countries. Such multilateral action helps to ensure that trade restrictions prevent these countries from exporting their fish to new markets or from transshipping through intermediary nations in order to evade trade restrictions.

Comment 7: Due to the lag time associated with data collection and implementation of the regulations, the United States has difficulty considering new catch and trade information that comes to light between ICCAT meetings.

Response: NMFS recognizes these difficulties but is committed to using the best available data to evaluate member and non-member fishing activities in an effort to identify possible trade-related problem vessels and countries for consideration and possible action at ICCAT. NMFS believes that, although time consuming, a multilateral approach is an appropriate and effective way to address fishing activities that diminish the effectiveness of ICCAT.

Northern Albacore Rebuilding

Comment 8: A rebuilding program for northern albacore must take into consideration the U.S. recreational fishery. Establishing an incidental catch quota and applying recreational landings against that quota, as was done in the swordfish rebuilding program, will not reflect the magnitude of the current recreational fishery for albacore.

Response: In establishing the foundation for an international rebuilding program, NMFS would work through ICCAT to adopt a target stock size and time frame for rebuilding. Should ICCAT adopt a country specific quota system as an element of the rebuilding program, the United States would seek to obtain an equitable allocation based on its historic share, including both the recreational and commercial components of the fishery. Domestic implementation of the country quota would again reflect patterns of historical use.

Changes From the Proposed Rule

No changes, other than minor editorial changes, were made from the proposed rule.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries. The objective of this final rule is to improve conservation and management of the Atlantic swordfish and BFT. No new reporting, record-keeping, or other compliance requirements are required by this final rule.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA). A Final Regulatory Flexibility Analysis (FRFA) has been prepared and a summary is provided here. In preparing the FRFA, it was assumed that the population of small entities affected consists of fishermen issued limited access permits for swordfish. As of December 31, 1999, there were 450 directed and incidental swordfish permit holders and 118 swordfish handgear permit holders. The quota reductions and implementation of the dead discard allowance will, in the short term, reduce ex-vessel swordfish revenues for a substantial portion of the swordfish fleet.

Assuming that the lower quotas will result in equal reductions in swordfish catch for all vessels, the majority of the fleet may experience declines in revenue of between 1 and 4 percent by 2001. By 2002, about 42 percent of active permit holders will experience declines in gross revenues of between 1 and 5 percent, although none of the active permit holders will experience revenue decreases of 5 percent or more. Estmated impacts are lower than those provided in the draft EA, due to a final rule to reduce bycatch and incidental catch in the pelagic longline fishery that was published on August 1, 2000. Additional vessels may be affected if there are more dead discards than expected, thereby making further reductions to the landings quota necessary. However, even without compensatory actions by vessel operators (e.g., increased yellowfin or bigeye tuna fishing) or marketing efforts to enhance prices in the domestic fresh swordfish market, no vessels are expected to experience revenue declines of 5 percent or more. Additionally, lower quotas expected to contribute to stock rebuilding within a 10-year time frame. Thus, negative short-term impacts are expected to yield revenue gains in the long run as the stock is rebuilt and landings quotas increase.

The other alternative considered by NMFS was the status quo. No other alternatives were considered, because NMFS is required under ATCA to implement ICCAT recommendations upon acceptance by the United States and because multilateral action through ICCAT is the only way swordfish can be rebuilt. Although the status quo for the swordfish quotas might have lesser short-term economic impacts on participants in the pelagic longline fishery, that alternative is not consistent with the rebuilding plan established by the HMS FMP. Not implementing the quota reductions and the dead discard allowance at this time would maintain current catch levels only in the short term. Eventually, further decline in swordfish abundance would increase fishing costs (lower catch per unit effort/increased discards of small fish) and decrease revenues (lower total swordfish catch); thus, greater economic impacts would likely result from maintaining the status quo. The FRFA provides further discussion of the economic effects of the alternatives considered. The factual, policy and legal reasons for selecting the alternatives adopted in the final rule are outlined in the EA.

Implementing the trade restrictions for Belize, Honduras and Equatorial Guinea will not have a significant economic impact on a substantial number of small entities, because these countries currently do not export to the United States and there are already alternative sources of supply for U.S. importers and processors.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The final action does not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion (BO) was issued on June 30, 2000. However, NMFS has reinitiated consultation on the pelagic fisheries for swordfish, sharks, tunas and billfish because the agency determined further analysis of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on turtles. In the meantime, NMFS has issued an emergency rule that is effective for 180 days from October 10, 2000 through April 9, 2001. The emergency regulations establish a time and area closure and gear requirements to reduce bycatch and bycatch mortality of threatened loggerhead and endangered leatherback sea turtles pending completion of the new BO.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, paragraphs (c)(1)(i)(A) and (c)(3)(i) are revised, and paragraphs (c)(1)(i)(C) and (c)(3)(iii) are added to read as follows:

§ 635.27 Quotas.

(c) Swordfish. (1) * * *

(i) *North Atlantic swordfish stock.* (A) The directed fishery quota for the North Atlantic swordfish stock is 1,919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(C) The dead discard allowance for the North Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning May 1, 2001. All swordfish discarded dead from U.S. fishing vessels, regardless of whether discarded from vessels permitted under this part, shall be counted against the allowance.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph (c)(3)(iii).

3. Section 635.45 is revised to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of BFT or BFT products, or swordfish or swordfish products, in any form, harvested by a vessel under the jurisdiction of Belize or Honduras will be denied entry into the United States.

(b) All shipments of BFT or BFT products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea will be denied entry into the United States.

4. The heading of § 635.46 is revised to read as follows:

§ 635.46 Import requirements for swordfish.

[FR Doc. 00–31651 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 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 THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[Docket No. 2000–91]

RIN 1550–AB29

Savings and Loan Holding Companies; Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Office of Thrift Supervision (OTS) is extending the comment period until February 9, 2001 for its proposed rule published October 27, 2000. The proposed rule would require certain savings and loan holding companies to notify OTS before engaging in, or committing to engage in, a limited set of debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions. The proposal also sought comment on a proposal to codify OTS's current practices for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital on a case-by-case basis.

DATES: Comments must be received by February 9, 2001.

ADDRESSES:

Mail: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–91.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Docket No. 2000–91.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–91; or (202) 906–6956 (if comments are over 25 pages).

E-Mail: Send e-mails to ''public.info@ots.treas.gov'', Attention Docket No. 2000–91, and include your name and telephone number.

Public Inspection: Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9:00 a.m. until 5:00 p.m. on business days. Comments and the related index will also be posted on the OTS Internet Site at *www.ots.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin O'Connell, Senior Project Manager, (202) 906–5693, Supervision Policy; and Valerie J. Lithotomos, Counsel (Business and Finance) (202) 906–6439, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The proposed rule, published in the **Federal Register** on October 27, 2000 (65 FR 64392), indicated that public comments were to be submitted to the OTS no later than December 26, 2000.

OTS received two requests for an extension of the comment period. One request states that the rule proposes a significant change to OTS policy and that compliance with the current comment deadline would require a significant dedication of resources in the midst of year-end activities. The second request indicates an extension is warranted because the issues addressed in the proposal are of sufficient importance and complexity.

To afford the public adequate time to comment, OTS has determined to extend the comment period for 45 days to accommodate these requests. Therefore, the comment period is hereby extended until February 9, 2001.

Dated: December 6, 2000.
By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–31516 Filed 12–11–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) AE 2100 and AE 3007 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD), applicable to Rolls-Royce Corporation, (formerly Allison Engine Company), AE 2100 and AE 3007 series engines. This proposed AD would require a one-time acid etch inspection of the 2nd stage high pressure turbine (HPT) wheel for cracks. If the wheel is cracked, this proposed AD would require replacement of the turbine wheel with a serviceable part. This proposed AD is prompted by a report of a 2nd stage turbine wheel that was returned from the field with cracks in the aft bore face. The actions specified by this proposed AD are intended to detect and prevent early development of cracks due to low cycle fatigue of the HPT 2nd stage wheel in the aft bore face that can lead to wheel failure, power loss, and possible damage to the airplane.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office,

FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7870, fax (847) 294–7834.

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 action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–27–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. 2000–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of cracks in the aft bore face of a 2nd stage high pressure turbine wheel from an AE 2100A engine that was returned from the field. Review of the manufacturing process revealed the cracks were caused by contact between the bore vertical face and a carbide tool bit during machining of the under side of the seal arm lip. This condition, if not corrected, could result in an early development of cracks due to low cycle fatigue of the HPT 2nd stage wheel in the aft bore face that can lead to wheel failure power loss, and possible damage to the airplane.

The inspection intervals for the early manufactured turbine wheels (P/N 23050912) were set to maintain a risk of a wheel burst event to levels at or below 1x10 EE–8 events per cycle. This determination is made based on the crack growth rates observed in the one field returned turbine wheel, the specific missions flown for each engine model, and the probability of a turbine wheel having been damaged. The inspection interval for the remaining engine models was set at ''next shop visit'' based on the lower risk of having been damaged, the shot peen benefits, and the projected shop visit rate for these models.

The ''one-time'' inspection is adequate because it identifies (via acid etch) those turbine wheels which were damaged during manufacturing and removes them from service thereby eliminating the risk of a premature wheel failure.

Service Bulletins (SB's)

The FAA has reviewed and approved the technical contents of Rolls-Royce Alert Service Bulletins (ASB's): AE2100A–A–72–234, Revision 2; AE2100C–A–72–183, Revision 2; AE2100D3–A–72–179, Revision, 2, dated October 17, 2000 and AE3007A–A–72, Revision 2, and AE3007C–A–72–153, Revision 2, dated October 17, 2000, that describe the procedures for examining the turbine wheels for damage using the one-time acid etch procedure.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time acid etch inspection of the 2nd-stage high pressure turbine wheel for damage. If the wheel is damaged, this proposal would require replacement of the turbine wheel with a serviceable part. The actions would be required to be done in accordance with the alert service bulletins described previously.

Economic Analysis

There are approximately 1,376 engines of the affected design in the worldwide fleet. The FAA estimates that approximately 470 engines installed on airplanes of US registry would be affected by this proposed AD. The FAA estimates that disassembly to perform the acid etch inspection and reassembly will take approximately 130 work hours, which includes teardown to HPT, inspection and reassembly, and that the average labor rate is $60 per work hour. Labor costs to perform the disassembly/reassembly are $7,800, and a test stand run will cost about $5,000, for a total cost of $12,800 per engine to conduct the acid etch inspection. Based on these figures, the FAA estimates that the total cost impact of performing the acid etch inspection on US operators will be $6,016,000. If a wheel must be replaced, the cost of a replacement wheel is $18,000, and it will take an additional 30 work hours to replace the wheel, at $60 per work hour. Therefore the total cost of parts and labor for replacing the wheel will total $19,800.00 per wheel. If all wheels needed to be replaced, the total cost impact of the proposed AD on U.S. operators would be $15,322,000. The FAA estimates, however, that not all wheels will need replacement and that some labor costs required to accomplish the requirements of this proposed AD maybe reimbursed by the manufacturer, thus reducing the total cost impact of the proposed AD on US operators.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 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 proposal.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Code of Federal 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:

Rolls-Royce Corporation: Docket No. 2000–NE–27–AD.

Applicability: This airworthiness directive is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) models AE 2100A and AE 2100C engines with high pressure turbine (HPT) wheel 23050912 installed; AE 2100A engine with turbine wheel 23063462-serial number (S/N) MM14062 installed; AE 2100D3 and AE 3007A, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1, AE 3007A1P, AE 3007A3 and AE 3007C with HPT second stage wheels with S/Ns before MM183060. These engines are installed on but not limited to Embraer (EMB) 145 and 135, Cessna Citation 750, and Industi Pesawat Terbang Nusantara (IPTN) N–250 airplanes.

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

Compliance: Compliance with the requirements of this AD is required as indicated, unless already.

To detect and prevent early development of cracks due to low cycle fatigue of the high pressure turbine (HPT) 2nd stage wheel in the aft bore face that can lead to wheel failure power loss, and possible damage to the airplane, do the following:

One-time Inspection

(a) Perform a one-time acid etch inspection to the 2nd stage high pressure turbine wheel in accordance with the Accomplishment Instructions contained in the following Rolls-Royce Alert Service Bulletins:

TABLE 1.—APPLICABLE ALERT SERVICE BULLETINS

AE models	Rolls-Royce service bulletin
AE 2100A	AE 2100A–A–72–234, Revision 2, dated October 13, 2000.
AE2100C	AE 2100C–A–72–183, Revision 2, dated October 13, 2000.
AE2100D3	AE 2100D3–A–72–179, Revision 2, dated October 13, 2000.
AE3007A	AE 3007A–A–72–179, Revision 2, dated October 17, 2000.
AE3007C	AE 3007C–A–72–153, Revision 2, dated October 17, 2000.

(b) Perform these inspections according to the following compliance times:

TABLE 2.—INSPECTION COMPLIANCE TIMES

Models	With turbine wheel	Mandatory
(1) AE2100A, AE2100C	23050912	Before 4800 cycles since new (CSN).
(2) AE2100A	23063462–S/N MM 14062	Before 4800 CSN.
(3) AE2100D3	23050912	Before 3200 CSN.
(4) All other AE2100A, AE2100C, and AE2100D3.	23069592, 23063462, 23064822, 23070673, 23065892, 23069116, 233064473, 23064474, 23068072 with S/N's MM183060 and before..	Next shop visit.
(5) All AE3007A, AE3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1, AE3007A1P, AE3007A3, and AE3007C series engines.	23063462, 23065892, 23069116, 23069592, 23069438, with S/N MM183060 and before..	Next shop visit.

(c) If cracks are discovered, replace the turbine wheel with a serviceable part.

(d) The next shop visit is defined as whenever the engine is removed and sent to a maintenance center for inspection or repair.

(e) A serviceable part is defined as any turbine wheel with a serial number greater than MM183060, or less than MM183060, that has undergone an acid etch inspection and has been determined to have no cracks.

Alternative Methods of Compliance

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

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

Ferry Flights

(g) 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.

Issued in Burlington, Massachusetts, on December 1, 2000.

David A. Downey,

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

[FR Doc. 00–31613 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–71–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt

& Whitney (PW) JT8D series turbofan engines. This proposal would require removing certain 2nd stage compressor disks, specified by serial number, from service. This proposal is prompted by a report from PW of a number of JT8D engine 2nd stage compressor disks that were delivered to the field with potential machining damage to the tie rod, counterweight, and pin holes. The actions specified by the proposed AD are intended to prevent rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–71–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–71–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. 98–ANE–71–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Pratt & Whitney (PW) notified the Federal Aviation Administration (FAA) of the possibility of machining damage in the holes of five hundred twenty-three 2nd stage compressor disks, part number (P/N) 745902, P/N 790832, and P/N 807502. Machining damage may have resulted in distorted microstructure in the tie rod, counterweight, and pin holes. Increased stress due to the distorted microstructure could cause cracks that propagate through the disk. This condition, if not corrected, could result in rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved the technical content of JT8D Alert Service Bulletin (ASB) JT8D A6336, Revision 1, dated June 29, 1999, that lists the serial numbers (SN's) of certain 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, and describes procedures replacing the disk if it is listed by SN in the ASB.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD is being proposed to prevent rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane. This proposed AD would require removal of 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, before accumulating 2,000 cycles-since-new if the SN is listed in the ASB. The compliance time was established based on the safety concerns and the life management analysis. The actions would be required to be accomplished in accordance with the ASB described previously.

Cost Impact

There are approximately 110 engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines, installed on airplanes of U.S. registry, would be affected by this proposed AD, that it would take approximately 48 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The prorated cost of the unusable life of a 2nd stage disk is $30,000. The manufacturer has informed the FAA that it may pay the cost of the disk, which may lower the cost to operators. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $1,972,800.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 98–ANE–71-AD.

Applicability: JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A,–11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines with 2nd stage compressor disks, part number (P/N) 745902, P/N 790832, and P/N 807502, installed. These engines are installed on, but not limited to Boeing 727 series airplanes, Boeing 737–100 and –200 series airplanes and McDonnell Douglas DC–9 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a rupture of the 2nd stage compressor disk, caused by machining damage, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Removal of Disk

(a) Remove from service 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, identified by serial number in the Accomplishment Instructions of JT8D Alert Service Bulletin (ASB) JT8D A6336, Revision 1, dated June 29, 1999, prior to accumulating 2,000 cycles since new.

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, 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

(c) 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.

Issued in Burlington, Massachusetts, on December 5, 2000.

Diane S. Romanosky,

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

[FR Doc. 00–31614 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 00N–1586]

Revision to Requirements for Licensed Anti-Human Globulin and Blood Grouping Reagents; Companion to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations applicable to microbiological controls for licensed Anti-Human Globulin (AHG) and Blood Grouping Reagents (BGR). FDA is proposing to remove the requirements that the products be sterile. FDA is taking this action because the requirement that these products be sterile is not necessary for the products to be safe, pure, and potent. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. FDA is taking this action final because the proposed changes are noncontroversial and FDA anticipates that it will receive no significant adverse comment.

DATES: Submit written comments on or before February 26, 2001.

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

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comment.

An adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document, before the effective date of the direct final rule, confirming that the direct final rule will go into effect on

June 11, 2001. Additional information about FDA's direct rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21,1997 (62 FR 62466).

AHG and BGR are used primarily for testing human blood for the detection of red cell antigens and antibodies. As defined in 21 CFR 660.20, BGR is a product that comes from blood, plasma, serum, or protein-rich fluids and consists of an antibody-containing fluid containing one or more of the blood grouping antibodies listed in 21 CFR 660.28(d). Under 21 CFR 660.50, AHG is a serum or protein-rich fluid that consists of one or more antiglobulin antibodies identified in 21 CFR 660.55(d). AHG and BGR are biological products as defined in section 351 of the Public Health Service Act (42 U.S.C 262) (the PHS Act). These products are also devices, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321), and fall within the definition of in vitro diagnostic products in § 809.3(a) (21 CFR 809.3(a)).

AHG and BGR must meet the licensing requirements of section 351 of the PHS Act and the regulations in parts 600 through 660 (21 CFR parts 600 through 660). Section 351 of the PHS Act requires that a license applicant demonstrate that the biological product that is the subject of the application is safe, pure, and potent, and that the manufacturing facilities are designed to ensure that the biological product continues to be safe, pure, and potent.

AHG and BGR are also medical devices and in vitro diagnostic products as defined in § 809.3(a), and therefore are subject under the act and 21 CFR 809.20(b) to the requirements in the Quality System Regulation (QSR) in part 820 (21 CFR part 820). The QSR requires that a manufacturer establish appropriate manufacturing controls. A manufacturer must validate the manufacturing process in accordance with § 820.75 and establish production and process controls (§ 820.70). See also the ''Guideline for the Manufacture of In Vitro Diagnostic Products'' published in the **Federal Register** of January 10, 1994 (59 FR 1402).

The standards for AHG and BGR were established by final rules published in the **Federal Register** of February 11, 1985, and April 19, 1988, respectively (50 FR 5574 and 53 FR 12760). The standards in §§ 660.20(a) and 660.50(a) require BGR and AHG to be manufactured by a ''method demonstrated to consistently yield a sterile product.'' In addition, the requirements for processing methods of BGR and AHG under §§ 660.21(a)(2) and 660.51(a)(3) state ''[o]nly that material that has been fully processed, thoroughly mixed in a single vessel, and sterile filtered shall constitute a lot,'' and under §§ 660.21(a)(3) and 660.51(a)(4) that ''[a] lot may be subdivided into clean sterile vessels''.

When the regulations were codified, the agency expected that AHG and BGR would be manufactured as sterile under the conditions understood at that time. The agency also considered that the process of sterile filtration and a sterile container and closure system, e.g., vessels, would be sufficient to yield consistently a sterile product (50 FR 5574 at 5575; 53 FR 12760 at 12761). However, current good manufacturing practices require aseptic processing controls to be in place in order to ensure a sterile product. The agency considers AHG and BGR to be microbiologically controlled in vitro diagnostics (IVD's), which are IVD's that are capable of supporting microorganism life and growth and may contain certain levels of microorganisms. Microbiologically controlled IVD's do not need to be manufactured under aseptic conditions; however, they should be manufactured under conditions such that the microbial level will not adversely impact product performance. Manufacturers must establish specifications for these products through testing and validation. FDA's proposed revision of the regulations would in no way undermine the safety, potency, or purity of the products. The proposed revisions would also not prevent a manufacturer from implementing aseptic processing controls for manufacturing AHG and BGR, if the manufacturer determines such controls are appropriate for its product. Therefore, the agency is proposing to revise the standards for AHG and BGR to remove the requirement that these products be sterile.

II. Highlights of the Proposed Rule

FDA is proposing to amend the biologics regulations by revising §§ 660.20, 660.21, 660.50, and 660.51 to clarify the agency's requirements with regard to microbiological control in manufacturing AHG and BGR. FDA is proposing to amend the regulations by deleting all references to sterile processing techniques such as sterile filtration and sterile container and closure systems. FDA is proposing to amend §§ 660.20(a) and 660.50(a) by deleting the phrase regarding preparation ''by a method demonstrated to yield consistently a sterile product'' because FDA recognizes that controls to ensure a sterile product, i.e., aseptic processing controls, are not necessary to ensure that AHG and BGR meet their performance specifications. In addition, §§ 660.21(a)(1) and 660.51(a)(1) include requirements regarding the adequacy of the processing method. FDA is proposing to amend §§ 660.21(a)(2) and 660.51(a)(3) by deleting the term ''sterile'' because the manufacturer must establish those controls appropriate for its product, and it may not be necessary for microbiologically controlled IVD's to undergo sterile filtration. FDA is proposing to amend §§ 660.21(a)(3) and 660.51(a)(4) by deleting the reference to ''clean, sterile vessels'' because FDA believes that manufacturers are in the best position to determine the appropriate level of microbial control for container and closure systems. Appropriate process specifications must be established by the manufacturer to ensure that microbiologically controlled IVD's are manufactured under appropriate conditions and controls resulting in a product that consistently meets all of its specifications. The manufacturer must demonstrate in the license application that the appropriate level of control of microbial contamination ensures that the biological product continues to meet the licensing requirements. The proposed change to the regulation in no way affects the testing and validation a manufacturer must perform in order to establish that the manufacturing specifications are appropriate to ensure the product will perform as intended. In addition, under the current good manufacturing practice regulations for blood and blood components, end users of AHG and BGR, such as blood banks, are required under § 606.65(c) to perform daily checks for potency and specificity of supplies and reagents used in the collection and testing of blood and blood components.

The agency also believes the proposed change is consistent with other requirements in the biologics regulations, such as the sterility testing requirements set forth in § 610.12. This section requires sterility testing for most biological products; however, BGR and AHG are specifically exempted from the sterility testing requirements for bulk and final container material § 610.12(g)(4)).

The proposed rule would also remove the requirement in § 660.51(a)(4) that a manufacturer who subdivides a lot shall include this information on the protocol. FDA is making this change to reflect current agency practice. Manufacturers would still be required to submit this information in the license application. See § 601.2 regarding

requirements for the submission of samples and protocols to FDA.

III. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because the proposed rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the proposed rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act of 1995 because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. The Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by February 26, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 660 be amended as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

1. The authority citation for 21 CFR part 660 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263 263a, 264.

§ 660.20 [Amended]

2. Section 660.20 *Blood Grouping Reagent* is amended in paragraph (a) by removing the words ''prepared by a method demonstrated to yield consistently a sterile product and''.

§ 660.21 [Amended]

3. Section 660.21 *Processing* is amended in paragraph (a)(2) by removing the word ''sterile''; and in paragraph (a)(3) by removing the words ''clean, sterile vessels. Each subdivision shall constitute a sublot.'' and adding in its place the word ''sublots.''

§ 660.50 [Amended]

4. Section 660.50 *Anti-Human Globulin* is amended in paragraph (a) by removing the words ''and be prepared by a method demonstrated to yield consistently a sterile product''.

§ 660.51 [Amended]

5. Section 660.51 *Processing* is amended in the first sentence of paragraph (a)(3) by removing the word ''sterile'' and in paragraph (a)(4) by removing the words ''clean, sterile vessels. Each subdivision shall constitute a sublot'' and adding in its place the word ''sublots'', and in the third sentence by removing the words ''and on the protocol''.

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31587 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 945

[FHWA Docket No. FHWA–99–5844]

RIN 2125–AE63

Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of docket comment period.

SUMMARY: This document reopens the comment period on this docket and delays the issuance of a final rule to require the use of the FHWA specification for Dedicated Short Range Communication (DSRC) for Commercial Vehicle Operations (CVO); a provisional standard for Intelligent Transportation Systems (ITS) commercial vehicle projects using highway trust funds. Based on the comments received, the date of the final rule will be determined by the completion of the testing program to evaluate products designed to meet the provisional standard. Also, this document responds to all the substantive comments received to date on this docket.

DATES: This docket will remain open until the FHWA publishes another rulemaking document when testing is complete.

ADDRESSES: Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page

that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, ITS Joint Program Office (JPO), (202) 366–2128, e-mail address <*william.s.jones@fhwa.dot.gov*>; or Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–32) (202) 366–0780, e-mail address <*wilbert.baccus@fhwa.dot.gov*>, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The notice of proposed rulemaking (NPRM) published at 64 FR 73674 on December 30, 1999, under Docket No. FHWA 99–5844, contains a detailed discussion of the events and background that has led to this rulemaking process. Only a brief summary of this background is presented in this Supplemental NPRM.

In section 5206 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, at 457 (23 U.S.C. 502 Note), the Congress requires the Department to ''ensure the national interoperability'' of ITS services through standards. To carry out this mandate, the Congress stated that the Secretary could use the services of existing standards-setting organizations, as appropriate. The statutory provisions also provide that use of approved standards shall be established as a prerequisite for use of highway trust funds on relevant ITS projects. Further, the Congress authorized the Secretary to issue ''provisional standards'' when the normal consensus standard development process was unsuccessful in reaching agreement on a standard.

There is a clear need for interoperability in at least two applications of DSRC technology within the ITS program as follows:

1. Interstate trucks that participate in the Commercial Vehicle electronic screening programs require national interoperability. This allows participating vehicles to be electronically cleared, if they are safe and legal, without stopping at State ports of entry or weigh/inspection stations.

2. All vehicles, including passenger cars and trucks, in a common multitoll environment within a single State or multistate metropolitan area, require regional interoperability.

This rulemaking only addresses the national interoperability requirement for commercial vehicle applications of DSRC technology. For the CVO program to be successful, it is essential that these vehicles be able to travel from State to State, and within a State, using DSRC technology for processing at automated inspection stations and to be able to bypass State ports of entry if they meet the criteria for safety, and possess the appropriate credentials. The only way to achieve this fundamental objective is to have DSRC standards that all States utilize for their ITS CVO implementations. Thus, this application clearly falls within the TEA–21 definition of standards ''critical to national interoperability.'' The critical standards list defined by the ITS Joint Program Office (JPO), in response to the TEA–21, can be accessed on the JPO web site: *http://www.its.dot.gov.*

The FHWA entered into a rulemaking process for CVO because the established standards process was unable to produce a standard that would ensure national interoperability. The current set of DSRC standards that have been adopted by the American Society of Testing and Materials (ASTM), ASTM PS 111–98 and ASTM PS 111–xxx, allow multiple DSRC technologies to exist, thus promulgating the current interoperability dilemma. The DOT, therefore, defined a provisional standard that incorporated portions of the ASTM standards and the IEEE standard, IEEE P 1455, that was backward compatible with all existing CVO installations. The NPRM required that this new provisional standard be used for all new purchases of DSRC devices for commercial vehicle electronic screening when highway trust funds were used for these purchases after January 1, 2001.

Because of the concerns voiced by the CVO community about proceeding with a rule before equipment designed to the provisional standard has been tested to ensure its technical viability, the FHWA has decided to postpone issuing the final rule until that test program is complete. The subject NPRM stated that the FHWA intended to test the provisional specification. At the time the NPRM was drafted, those tests were to have been completed prior to the effective date of the final rule. Further, the NPRM stated that the intent of the provisional specification was to enable backward compatibility. Backward compatibility means that no existing roadside or vehicle equipment for electronic screening would be required to be modified or replaced. To ensure this compatibility, the manufacturers were involved in developing the provisional specification, and the FHWA is going to test produce built with the provisional specification for both functional capability and backward compatibility.

Although there were other comments to the NPRM, these were clearly the most crucial in their potential impact on the CVO community. Having addressed these concerns, the FHWA believes it is necessary to continue the rulemaking process to achieve the objective of national interoperability in the CVO program at a time when the tested technologies can support the use of the provisional standard.

In the subsequent discussion, the substantive comments will be addressed.

Comments to the NPRM

There were 24 comments received by the FHWA concerning the proposed rule. Comments were received from a joint submission of HELP Inc. and NORPASS Inc.; the HELP/NORPASS comments were supported by State Trucking Associations from California, Arkansas, Arizona, Montana, and Nevada; and by Combined Transport Inc., Montana Department of Transportation, NATSCO Inc., Delphi Automotive systems, Market Transport, Ltd., Watkins Shepard Trucking Inc., Wyoming Highway Patrol, Lockheed Martin IMS, and the Tennessee Department of Safety. This group of 15 respondents will be referred to as HELP in subsequent discussions. Additional comments were received from Amtech Systems, Mark IV IVHS, Inc., Peace

Bridge Authority, TransCore, the American Trucking Association (ATA), E–Z Pass IntgerAgency Group, Illinois Department of Transportation, Washington State Department of Transportation, and the Wisconsin Department of Transportation.

Response to Comments on the NPRM

Comment: The ATA, TransCore, and HELP questioned the need for DOT to do a rulemaking because of the widespread use of the existing device throughout the CVO community.

FHWA Response: It is the opinion of the FHWA that the current, essentially de facto, ''standard'' is a result of the ITS funding that has spurred the deployment of CVO technology and the insistence of the FHWA on the use of that device. However, CVO may be deployed using other non-Federal funding sources where the FHWA will not have the opportunity to enforce the de facto standard. The Department is aware of States that would prefer to use another device that is more compatible with other DSRC applications in their region, such as electronic tolls. Therefore, the only way to ensure the DOT is doing everything possible to achieve national interoperability is to insist that if Federal funds are employed in the deployment, that a standard will be used. It is recognized that States may still circumvent the regulation by not using highway trust funds for CVO projects. However, it is incumbent upon the Department to do everything practical to ensure national interoperability.

Comment: HELP asserted that the proposed rule would have the Federal government pick winners and losers in the industry.

FHWA Response: The Department does not agree that the proposed rule would pick ''winners and losers'' in the DSRC industry. There are currently two suppliers of equipment for the CVO application. These two suppliers were chosen by both HELP and Norpass, not the Federal government. Both of these suppliers have indicated a willingness to build products to the proposed FHWA specification. The operators of CVO facilities would have the same competitive environment that currently exists.

Comment: HELP and Washington State DOT were concerned that the proposed specification would require significant modifications to their existing equipment and potentially cause interruptions in existing service.

FHWA Response: The existing manufacturers have indicated that the new transponders designed to the FHWA specification would be backward compatible with all existing roadside equipment. Therefore, this regulation would neither require modifications nor cause disruptions in service. The FHWA specification provides, but does not require, additional functionality in the roadside equipment for CVO application. It also does not require truckers to change their existing transponders. Therefore, there should be no interrruption in the daily operations of existing CVO installations. The FHWA testing program will validate this capability.

Comment: HELP commented that the proposed rule would be in violation of California law.

FHWA Response: The proposed regulation does not apply to the electronic toll collection application of DSRC, and therefore is not in conflict with California law.

Comment: HELP, and ATA, and Washington DOT believed this rule would be in conflict with electronic toll activities and would not provide interoperability for toll systems.

FHWA Response: The proposed rule does not apply to the electronic toll application of DSRC. It is recognized that this rule will not solve the interoperability problem within the toll industry as was clearly stated in the NPRM.

Comment: HELP and Washington DOT felt that there was not adequate time provided for public discussion of the proposed rule.

FHWA Response: This SNPRM reopens the docket and will allow for comments to be submitted over an extended time frame. However, the Department engaged in public discussions for almost two years on the subject of DSRC interoperability and the potential avenues to achieving that goal. The idea of the ''sandwich'' specification, the popular name for the FHWA specification, for DSRC was discussed at a number of forums involving both the toll and CVO communities beginning in mid-1998, almost a year before entering the formal rulemaking process. The Department does not agree that there has been inadequate time for the community to respond. However, the decision to postpone the final rule until testing is complete should satisfy this concern.

Comment: HELP, the E–Z Pass Interagency Group, TransCore, Mark IV, Washington DOT, and Wisconsin DOT were concerned that equipment built to the FHWA specification had not been tested.

FHWA Response: The Department recognizes that the FHWA specification has not yet been built and tested. The NPRM specifically stated the intent of the FHWA to conduct a test program to validate the efficacy of the specification and the backward compatibility feature prior to its mandatory use, and deferred application to procurement of new equipment after January 2001. It is now clear to the FHWA that the proposed test schedule is unlikely to be met, and that testing must be done before the device is deployed. Thus, FHWA is publishing this SNPRM to delay issuance of the final rule until after the test program is complete.

Comment: The ATA and HELP did not believe that there were other applications for DSRC and, therefore, the incorporation of the IEEE application layer standard into the FHWA provisional standard was unnecessary.

FHWA Response: The recent announcement of one of the manufacturers to build a new transponder that incorporates the FHWA specification, would signify to the Department that the supplier industry believes that there are multiple applications for the device beyond CVO. Further, the manufacturers that collaborated on the development of the specification agreed to the inclusion of the IEEE application layer standard in the belief that other applications were probable.

Comment: The ATA, HELP, the E–Z Pass Interagency Group, and Washington DOT were concerned that the proposed rule would adversely impact the development and deployment of DSRC devices at 5.9GHz.

FHWA Response: The FHWA does not believe that this regulation will have any impact on the development of equipment at the new 5.9GHz frequency. Manufacturers have publicly indicated that the two are unrelated and are moving forward to develop the standard for 5.9GHz and plan to build a product at that frequency to serve markets other than CVO. Further, the Department does not anticipate requiring the use of 5.9GHz for the CVO application in the foreseeable future, unless the CVO community would advocate such a transition.

Comment: The Amtech argues for a regional approach to interoperability since most of the nation's trucks are regional carriers. This would mean that each region could pick its own locally utilized transponder configuration, presumably a toll application, for use in its CVO application. This means that the majority of trucks in the nation, the regional carriers, would require only one transponder, and the interstate trucking fleets would require at least two transponders. The supposition is that the converse is true if FHWA

promulgates this rule, i.e., that all regional carriers would require two transponders.

FHWA Response: If promulgated, this rule would not require that all intrastate trucks have two transponders. The proposed rule does not prohibit States from installing roadside equipment at CVO sites that accommodates the regional toll standard for use by the intrastate carriers. However, this would be in addition to their existing equipment used for electronic screening which will be compatible with the new proposed FHWA specification. This option would be cheaper than equipping all intrastate vehicles with two transponders. However, the cost of that additional roadside equipment for toll collection would be borne by the public sector rather than the trucking industry. Presumably, the States would derive a public benefit from this approach, which would allow a large percentage of the commercial vehicles to be served within a local region. This approach would mean that the interstate trucks would be relegated to one transponder to serve all the CVO functions, and additional transponders as needed for operations with the toll agencies. The point is that there are alternatives to having multiple transponders while still retaining the objective of national interoperability for interstate trucking.

Comment: The ATA and TransCore were concerned that the FHWA regulation will stifle innovation in the industry and ''dooms state governments to perennial obsolescence.''

FHWA Response: The Department recognizes that the pace of technological innovation in the electronics industry is much faster than the traditional aspects of highway design that the FHWA normally regulates. Therefore, it is incumbent upon the Department to monitor the advances in technology that might affect the CVO industry, and be prepared to alter its position on the provisional standard as demanded by the changes in technology and community use.

Comment: The ATA and Amtech were concerned that the FHWA proposed rule would require multiple transponders in every truck.

FHWA Response: The current state of the toll industry, and for the foreseeable future, will require multiple transponders in vehicles to enable interstate travel using electronic toll collection. Further, the existing CVO transponders are not compatible with any of the toll applications. Therefore, the proposed rule is not intended, nor does it alter the current situation. This rule only addresses national interoperability for CVO functions.

The recent announcement by a manufacturer to build a transponder that is compatible with all three current DSRC protocols in use in the United States, could be argued to be the result of the Department's insistence on interoperability and its readiness to issue regulations to promote that goal. It is clear that this was not the only motivating factor, but it was an influencing factor. The practical result is that the ATA's goal of ''one truck one tag'' is closer to reality.

Comment: The ATA was concerned that the Department was ignoring congressional direction in Senate Report No. 106–55[1] directing the testing of passive technology.

FHWA Response: The FHWA has responded to the Senate Report No. 106–55. The FHWA has a program to test passive technology for its compatibility with current CVO DSRC equipment, and will do likewise when the proposed FHWA specification is tested.

Conclusion

Based on an evaluation of the comments, the Department has decided to proceed with a proposal that would require use of the FHWA specification for CVO applications, but delay issuance of a final rule until there are results from the planned testing of the new FHWA specification. Assuming that the tests prove the efficacy of the provisional specification, then the FHWA intends to proceed with the issuance of a final rule that would require the use of the FHWA specification for all CVO electronic screening projects.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal, therefore, a full regulatory evaluation is not required. The implementation of this standard will not alter the functionality of the DSRC roadside or in-vehicle equipment. The recurring cost of these devices should be virtually the same as paid for existing equipment. We do not anticipate any significant economic impact of the regulation proposed in this rulemaking document. Nevertheless, the FHWA solicits comments, information, and data on this issue.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. Based on that evaluation, the FHWA hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Any impact to small entities would likely be a positive one, due to the resulting ability of these entities to compete in the open market for ITS system integration work and other engineering services and to develop and market DSRC standards conforming devices useful in CVO deployment. Large corporations, through sales of their proprietary products and proprietary interfaces have previously dominated this market. Previously, large corporations that owned the proprietary interface designs were the only organizations able to manufacture, install, integrate, and service equipment with the proprietary interfaces. Although the large corporations may experience a small loss of engineering services business, this will be more than compensated for by the increased marketability of their DSRC standards profile-conforming products in the growing national ITS industry.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting 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 (2 U.S.C. 1531 *et. seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation,

[1] Senate Report No. 106–55, at 91 (1999) for the Department of Transportation and Related Agencies Appropriations Bill, FY 2000, Public Law 106–69.

eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not effect a taking of private property or othewise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 and amendments thereto regarding intergovernmental consultation on Federal programs and activities apply to this program. Those regulations stipulate that Federal agencies shall provide opportunities for consultation by element officials of State and local governments that would provide non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development. The regulations further state that the Federal agencies must communicate with the appropriate State and local officials as early in the program planning cycle as is reasonable feasible to explain specific plans and actions.

Since members of the ASTM, the IEEE. and the DSRC industry participated in establishing the need for the DSRC standards, in defining the requirements for the DSRC standards, and in development and approval of the DSRC standards, it is clear that requirements of the intergovernmental review regulations have been satisified. In addition, the FHWA and ITS America have made information about the standards program and the standards widely and publicly available. Furthermore, publication of this SNPRM further emphasizes the agency's efforts to coordinate with State and local governments by providing another opportunity to review and comment on our proposal.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in proposed rulemaking are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed regulation does not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no paperwork burden on the States or private entities. The proposal merely sets forth the DSRC interoperability standards for devices that collect the vehicle data that is already being transmitted either electronically, visually, or otherwise. As for the States assuring that vendors of the devices comply with these standards, the FHWA is not imposing any formal certification process on them. The States may accomplish assurances of vendor compliance as part of their usual and customary processes that they would adopt to implement the requirements of any Federal regulation.

United States International Trade Policy

The agency has analyzed the impact of this rulemaking on United States trade in accordance with Executive Order 12661 and finds no significant detrimental impacts on United States international trade policy.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 945

Communications, Highways and roads, Radio, Transportation-intelligent systems.

Authority: 23 U.S.C. #315, and 502 note; sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105–178, 112 Stat. 107, at 457; and 49 CFR 1.48.

Issued on: December 4, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 00–31642 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 18

RIN 1024–AC78

Leasing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend current National Park Service (NPS) regulations concerning the leasing of historic properties within areas of the national park system to encompass additional types of properties as authorized by law and to change in certain respects the procedural requirements for leasing of properties.

DATES: We will accept written comments, suggestions or objections on or before February 12, 2001.

ADDRESSES: Written comments should be sent to Richard Ring, Associate Director, Operations and Education, National Park Service, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, National Park Service Washington, DC 20240 (202/565–1212).

SUPPLEMENTARY INFORMATION: Section 802 of the National Parks Omnibus Management Act, Public Law 105–391, authorized NPS to grant leases for the use of buildings and associated property located within areas of the national park system to persons and governmental entities under certain conditions. This new leasing authority supplements existing NPS leasing authority concerning historic properties set forth in 16 U.S.C. 470h–3 and implemented in 36 CFR Part 18. NPS proposes by amendment of 36 CFR Part 18 to combine into one regulation the leasing authority provided by section 802 of Public Law 105–391 with the leasing authority provided by 16 U.S.C. 470h–3. This will achieve simplification of the NPS historic leasing process as also called for by section 802 of Public Law 105–391 and expand the scope of NPS leasing authority to all eligible properties. NPS also has authority to lease certain property located within units of the national park system under 16 U.S.C. 460*l*–22(a). This authority is implemented by NPS in 36 CFR Part 17. NPS does not intend to amend 36 CFR

Part 17. When 36 CFR Part 18 is amended as proposed, NPS will have authority to lease certain types of property under 36 CFR Part 17 or 36 CFR Part 18.

Section Content

Section 18.1. Authority and Purposes. Section 18.1 describes the authority for the proposed rule.

Section 18.2. Section 18.2 defines the terms used in the proposed rule.

Section 18.3. Section 18.3 describes the types of property that NPS may lease under this part. In general, this part applies to leases of both historic and non-historic property located within the boundaries of park areas.

Section 18.4. Section 18.4 describes the types of determinations NPS must make before it may lease property under this part. Before leasing property under this part, NPS must determine that the lease: (1) Will not result in degradation of the purposes and values of the park area; (2) will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area; (3) contains such terms and conditions as will assure the leased property will be used for an activity and in a manner that is consistent with the purposes established by law for the park area in which the property is located; (4) is compatible with the programs of the National Park Service; (5) is for rent at least equal to the fair market value rent of the leased property as described in section 18.5; (6) does not authorize activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument; and (7), if the lease is to include historic property, that the lease will adequately insure the preservation of the historic property.

Section 18.5. Section 18.5 describes the rent NPS must receive for property leased under this part. The rent must be at fair market value, determined after taking into account any restrictions NPS may place on the use of the leased property and any requirements for rehabilitation and maintenance of the leased property.

Section 18.6. Section 18.6 describes the types of uses that are permissible for property leased under this part. In general, leased property may be used for any lawful purpose subject to the determinations called for in section 18.4. These uses may include, among others, office or other commercial uses. Innovative uses that are consistent with the requirements of this part are encouraged.

Section 18.7. Section 18.7 describes the procedures for leasing property through a public bid process. The bid process may only be used if the amount of rent is the sole criterion for award of a lease. The bid process calls for public notice of the lease opportunity, submission of offers on a date certain, and a public bid opening and selection by NPS.

Section 18.8. Section 18.8 describes the procedures for leasing property through a proposal solicitation process. In general, the proposal solicitation process calls for public issuance of a Request for Proposals (''RFP'') that describes the leasing opportunity and the criteria for selection. After submission of proposals, NPS will select the best proposal upon application of established selection criteria. These include the compatibility of the proposal to the park area and its visitors, the experience and financial capability of the offeror, and the ability and commitment of the offeror to conduct its activities in an environmentally enhancing manner.

Section 18.9. Section 18.9 permits NPS to lease property to non-profit organizations and governmental units without competitive procedures if NPS determines it is in the public interest to do so.

Section 18.10. Section 18.10 describes the term of leases to be granted under the authority of this part. The term is to be no more than 60 years.

Section 18.11. Section 18.11 describes the general terms and conditions that a lease granted under authority of this part must contain. These include provisions that assure use of the property in a manner consistent with the purposes of the applicable park area, and, if applicable, the preservation of historic property that may be leased.

Section 18.12. Section 18.12 describes a number of specific terms and conditions that a lease granted under the authority of this part must contain. These include a termination for cause provision, a clause requiring the lessee to maintain the leased property, provisions regarding the use of the leased property, and, provisions that state that any improvements a lessee may make may only be undertaken with the approval of NPS.

Section 18.13. Section 18.13 describes the information collection requirements of the proposed rule.

Drafting Information

The primary authors of this rule are the members of a task force comprised of NPS officials involved in the leasing of national park system properties.

Compliance With Laws, Executive Orders and Departmental Policy

Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule within the meaning of Executive Order 12866 because of novel policy issues.

a. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment or other units of government. The rule imposes no obligations on any entity except for persons that may seek to be awarded an NPS lease. It does not apply to existing NPS leases.

b. This rule will not create inconsistencies with other agencies' actions as it only applies to the National Park Service.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule prescribes procedures for leasing lands of the national park system.

d. This rule raises novel policy issues as it prescribes new procedures for leasing lands of the national park system in accordance with the requirements of section 802 of Public Law 105–319 and 16 U.S.C. 470h–3.

Small Business Regulatory Enforcement Act

This rule is not a major rule under 5 U.S.C. 804(2) , the Small Business Regulatory Fairness Enforcement Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish procedures for the granting of leases of certain property located within areas of the national park system. Potential lessees will only submit lease proposals if the effects are positive.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act as it is not required to be published for comment before adoption by 5 U.S.C. 553 or other law. NPS is soliciting public comment on this proposed rule as a matter of policy. In any event, the Department of the Interior considers that the final rule will not have a significant effect on a substantial number of small entities as

defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). NPS anticipates that less than one hundred leases a year will be awarded under this authority. In addition, the rule is only applicable to prospective lessees. It has no effect on existing NPS leases.

Takings

In accordance with Executive Order 12360, this rule does not have significant takings implications as this rule does not apply to private property. A takings assessment is not required.

Federalism

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

Civil Justice Reform (E.O. 12998)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Information Collection

This rule (NPS Leasing Regulations—36 CFR Part 18) requires an information collection from ten or more parties so a submission under the Paperwork Reduction Act is required. An OMB form 83–I has been submitted to the Office of Management and Budget for approval. The information collection requirements of this rule are for the purpose of awarding and administering NPS leases. A federal 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.

Six categories of information collection are contained in the rule: Section 18.7 (Request for Bids); Section 18.8 (Requests for Qualifications/Proposals); Section 18.12(c) (Subletting and Assignment of Leases); Section 18.12 (i)–(j) (Approval of Lessee Construction/Demolition); Section 18.12(l) (Approval of Lessee Encumbrances); and Section 18.12(k) (Amendment of Leases). NPS will use the information collected to make administrative decisions with respect to these six categories. The respondents to these collections will be NPS lessees and prospective NPS lessees. NPS anticipates that there will be a total of approximately six hundred respondents per year with respect to Sections 18.7 and 18.8 and a total of approximately twenty-seven respondents per year with respect to the other information collection categories. NPS estimates that the total annual reporting and recordkeeping burden that will result from these collections of information will be 4392 hours, as set forth in the following chart.

Section	Number of responses	Hours per response	Total hours
Section 18.7	200	1	200
Section 18.8—Complex	20	40	800
Section 18.8—Simple	380	8	3040
Section 18.12(c)—Complex	1	40	40
Section 18.12(c)—Simple	4	8	32
Section 18.12 (i)–(j)—Complex	2	32	64
Section 18.12 (i)–(j)—Simple	8	8	64
Section 18.12(k)	2	4	8
Section 18.12(l)—Complex	2	40	80
Section 18.12(l)—Simple	8	8	64
Total	627	*7.0	4392

*Average.

Please send comments regarding this burden or estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (with a copy to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240). The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. NPS is soliciting public comments as to: (1) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility; (2) the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate electronic, mechanical, or other forms of information technology.

National Environmental Policy Act

This rule does not constitute a major federal action affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity?; (3) Does the format of the rule (groupings and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity?; (4) would the rule be easier to understand if it were divided into more but shorter sections?; (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding

the proposed rule?; (6) What else could be done to make the rule easier to understand? Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 36 CFR Part 18

Leasing, National Parks.

In consideration of the forgoing, 36 CFR Part 18 is proposed to be revised to read as follows:

PART 18—LEASING OF PROPERTIES IN PARK AREAS

Sec.

18.1 What is the authority and purpose for this part?
18.2 What definitions do you need to know to understand this part?
18.3 What property may be leased?
18.4 What determinations must the Director make before leasing property?
18.5 May property be leased without receiving fair market value rent?
18.6 Are there limitations on the use of property leased under authority of this part?
18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?
18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?
18.9 When may the Director lease property without issuing a request for bids or a request for proposals?
18.10 How long can the term of a lease be?
18.11 What general provisions must a lease contain?
18.12 What specific provisions may, must, or must not a lease contain?
18.13 Have information collection procedures been followed?

Authority: 16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k) , and, 16 U.S.C. 470h–3.

§ 18.1 What is the authority and purpose for this part?

16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k) , and, 16 U.S.C. 470h–3 are the authorities for this part. These authorities allow the Director (or delegated officials) to lease certain federally owned or administered property located within the boundaries of park areas. All leases to be entered into by the Director under these authorities are subject to the requirements of this part.

§ 18.2 What definitions do you need to know to understand this part?

In addition to the definitions contained in 36 CFR part 1, the following definitions apply to this part:

(a) *Associated property* means land and/or structures (e.g., parking lots, retaining walls, walkways, infrastructure facilities, farm fields) related to a building and its functional use and occupancy.

(b) *Building* means an enclosed structure located within the boundaries of a park area and constructed with walls and a roof to serve a residential, industrial, commercial, agricultural or other human use.

(c) *Commercial use authorization* means a written authorization to provide services to park area visitors issued by the Director pursuant to Section 418 of Public Law 105–391 and implementing regulations.

(d) *Concession contract* has the meaning stated in 36 CFR part 51.

(e) *Fair market value rent* means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased should rent for its highest and best use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Determinations of fair market value rent under this part are subject to the considerations stated in 18.5.

(f) *Historic land* means land located within the boundaries of an historic property.

(g) *Historic property* means buildings and land located within the boundaries of a park area if the buildings and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(h) *Land* means unimproved real property.

(i) *Lease* means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.

(j) *Non-historic building* is a building and its associated property that is located within the boundaries of a park area but is not located within the boundaries of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(k) *Non-historic land* means land located within the boundaries of a park area that is not associated property and is not historic property.

(l) *Park area* means a unit of the national park system.

(m) *Property* means a non-historic building and/or historic property that is located within the boundaries of a park area and is federally owned or administered.

(n) *Request for bids* refers to the lease bid process described in § 18.7.

(o) *Request for proposals* refers to the lease proposal process described in § 18.8.

(p) *Responsive bid or proposal* means a bid or proposal that meet the material requirements of a request for bids or a request for proposals.

§ 18.3 What property may be leased?

(a) *In general.* The Director may lease any property under this part if the Director makes the determinations required by § 18.4.

(b) *Non-historic land.* Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR part 17.

§ 18.4 What determinations must the Director make before leasing property?

Before leasing property in a park area under this part, the Director must determine that: The lease will not result in degradation of the purposes and values of the park area; the lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area; the lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located; the lease is compatible with the programs of the National Park Service; the lease is for rent at least equal to the fair market value rent of the leased property as described in § 18.5; the proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and, if the lease is to include historic property, the lease will adequately insure the preservation of the historic property.

§ 18.5 May property be leased without receiving fair market value rent?

Property may be leased under this part only if the Director ensures that the lease requires payment of rent to the government equal to or higher than the property's fair market value rent. The Director's determination of fair market value rent shall take into account: Any restrictions on the use of the property imposed by the Director that limit the value and/or the highest and best use of the property; and, any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property. The Director may take into account in determining the fair market value of property offered for

lease under § 18.7 the amounts of the bids received in response to the solicitation.

§ 18.6 Are there limitations on the use of property leased under this part?

(a) A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by § 18.4 and the limitations on activities set forth in paragraph (b) of this section.

(b) Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization if the Director determines in accordance with park area planning documents and related guidelines that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

§ 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?

(a) If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If historic property is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b) A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: ''Bid on lease of property of the National Park Service'' and shall note the date the bids are to be opened.

(c) Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease. A responsive bid is a bid that meets the material terms and conditions of the request for bids. The Director shall accept no bid in an amount less than the fair market rental value as determined by the Director. If two or more bids are equal, a drawing shall make the lease award by lot limited to the equal responsive bids received.

(d) When a property is to be leased through a request for bids, the bidder that is declared by the Director to be the high bidder shall be bound by his bid and this part to execute the offered lease, unless the bid is rejected. If the declared high bidder fails to enter into the lease for any reason, the Director may choose to enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value). The Director may reject any and all bids in his discretion and resolicit or cancel a lease solicitation under this part at any time without liability to any person.

§ 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?

(a) When the award of a lease is to be based on selection criteria in addition to the amount of the rent, the Director must solicit proposals for the lease through issuance of a public Request for Proposals (RFP).

(b) An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a ''short list'' of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP. If the Director issues an RFQ, only persons determined as qualified by the Director under the terms of the RFQ shall be eligible to submit a proposal under the related RFP.

(c) The Director must provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in the Commerce Business Daily. The public notice shall contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP (or RFQ where applicable). The RFP (and RFQ where applicable) shall contain appropriate information about the property proposed for lease, including any limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of proposals, terms and conditions of the lease, and the criteria under which the Director will evaluate proposals. The RFP may state the fair market value rent as the minimum acceptable rent if determined by the Director at that time. The RFP (and RFQ where applicable) must allow at least sixty (60) days for submission of proposals (or qualifications under an RFQ) unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

(d) The Director may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that fails to meet the material terms and conditions of the RFP. After the submission of offers and prior to the selection of the best overall proposal, the Director may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted proposals are given an opportunity to amend their proposals. The Director may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

(e)(1) The criteria to be used in selection of the best proposal are:

(i) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;

(ii) The financial capability of the offeror to carry out the terms of the lease;

(iii) The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease;

(iv) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy

conservation, waste reduction, and recycling; and

(v) Any other criteria the RFP may specify.

(2) If the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property shall be an additional selection criterion. If the RFP requires proposals to include the amount of rent offered, the amount of rent offered also shall be an additional selection criterion.

(f) The Director will evaluate all responsive proposals received. The proposal determined by the Director to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease. If two or more responsive proposals are determined by the Director to be substantially equal under the evaluation criteria, the Director shall provide an opportunity for those proposals to be amended by their offerors as necessary for the Director to select the best amended proposal. In such circumstances, the Director will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposals may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain as equal after amendment, the Director will select for negotiation of the lease the otherwise equal proposal that is rated highest with respect to paragraph (e)(1)(iv) of this section, the conduct of activities under the lease in an environmentally enhancing manner.

(g) The Director will provide the offeror that submitted the best overall proposal as determined by the Director a specified period of time to negotiate the final terms of the lease. The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, the Director, in his discretion, may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best proposal, or, cancel the solicitation.

(h) RFPs may state that the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended. The Director may execute a lease only if the Director determines that it requires the lessee to pay at least the fair market value rent of the leased property.

(i) The Director may execute a lease that includes historic property only after complying with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

§ 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?

The Director, except as provided in this section, may not lease property without issuing a request for bids or a request for proposals in compliance with § 18.7 or § 18.8. The Director under this part may enter into leases with non-profit organizations (recognized as such by the Internal Revenue Service) or units of government without complying with § 18.7 or § 18.8 if the Director determines that to do so it is in the best interests of the administration of the park area. All other requirements of this part are applicable to leases entered into or to be entered into under authority of this section. The Director may enter into leases under this part with a term of sixty (60) days or less without complying with § 18.7 or § 18.8 of this part if the Director determines that to do so is in the best interests of the administration of the park area. If historic land is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) before entering into the lease.

§ 18.10 How long can the term of a lease be?

All leases entered into under this part shall have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. No lease shall have a term of more than 60 years. Leases entered under the authority of this section may not be extended.

§ 18.11 What general provisions must a lease contain?

All leases entered into under this part must contain terms and conditions that are determined necessary by the Director to assure use of the leased property in a manner consistent with the purposes of the applicable park area as established by law, and where applicable, to assure the preservation of historic property. In addition, all leases entered into under this part must contain clauses applicable as a matter of law to leases and certain other mandatory provisions set forth in § 18.12.

§ 18.12 What specific provisions may, must, or must not a lease contain?

(a) All leases entered into under this part shall include a termination for cause or default provision.

(b) All leases entered into under this part shall contain appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease.

(c) All leases entered into under this part shall contain appropriate provisions regarding subletting or assignment of the leased property. Subletting and assignment of a lease, if permissible under the terms of the lease, must be subject to the Director's written approval that shall be granted only of the Director determines that the proposed sub-lessee or assignee is financially and managerially capable of carrying out the terms of the lease. Assignment of a lease for the purpose of effectuating an encumbrance to the lease or the leased property is subject to approval pursuant to the requirements of paragraph (l) of this section.

(d) All leases entered into under this part must contain appropriate provisions requiring the lessee to secure and maintain from responsible companies insurance sufficient to indemnify losses connected with or occasioned by the use and activities authorized by the lease. Types and amounts of insurance coverage will be specified in writing and periodically reviewed by the Director.

(e) All leases entered into pursuant to this part, unless the Director determines otherwise in the circumstances of a particular lease, must contain provisions requiring the lessee to obtain from responsible companies casualty insurance (including flood insurance if applicable) in the amount of at least the replacement value of any leased property. In the event of casualty, the lessee shall be required to repair or replace damaged or destroyed property unless otherwise determined by the Director. If the Director does not require the lessee to repair or replace damaged or destroyed property, any insurance proceeds due the lessee shall be remitted to the Director without offset as additional rent payment for the leased property.

(f) All leases entered into pursuant to this part must contain appropriate provisions requiring the lessee to save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, or judgments and expenses resulting from personal injury, death or property damage of any nature arising out of the lessee's activities under the lease, and/or the activities of the lessee's employees, subcontractors, sub-lessees, or agents. No lease entered into this part may contain provisions intended to provide indemnification or other

assurances to the lessee regarding the conduct or activities of the Director concerning the lease or the administration of the applicable park area. Leases may contain appropriate provisions that commit the Director to accept responsibility for tortious actions of government officials to the extent authorized by the Federal Torts Claim Act or as otherwise expressly authorized by law.

(g) All leases entered into under this part shall contain appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee, and, all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities.

(h) All leases entered into under this part shall contain appropriate provisions stating that a lease may not be extended by the Director and that the lessee has no rights of renewal of the lease or rights of any nature to award of a new lease of the leased property upon the expiration of the lease or upon termination of the lease for any reason. Leases entered into under this part are subject to cancellation by the Director in the exercise of the sovereign authority of the United States to the extent provided by applicable law. Unless otherwise authorized by law, the Director may not enter into a lease a lease that contains provisions that provide compensation to the lessee in the event of expiration or termination of the lease for any reason.

(i) Except as provided in this subsection, leases entered into under authority of this part may not contain provisions authorizing the lessee to construct new buildings or structures on leased property. Leases may contain appropriate provisions that authorize the lessee to construct, subject to the prior written approval of the Director, minor additions, buildings or structures determined by the Director to be necessary for support of the authorized activities of the lessee and otherwise to be consistent with the protection and purposes of the park area. Approval by the Director of new construction may only be granted if the Director makes the determinations required by § 18.4.

(j) All leases entered into under this part shall contain appropriate provisions to the requiring that: Any improvements to or demolition of leased property to be made by the lessee may be undertaken only after receipt of written approval from the Director; that any improvements to or demolition of historic property may only be approved if the Director determines that the improvements or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68); any improvements made by a lessee shall be the property of the United States; and the lessee has no right of compensation for any real property improvements the lessee may make under the terms of the lease upon lease termination or expiration or otherwise.

(k) All leases entered into under this part shall contain appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property. The types of activities described in a lease may be modified from time to time with the approval of the Director through an amendment to the lease. The Director may approve modified activities only if the determinations required by § 18.4 remain valid under the proposed modified activities and the proposed activities are otherwise determined appropriate by the Director.

(l) Leases entered into under this part may contain provisions authorizing the lessee to pledge or encumber the lease as security, provided that any pledge or encumbrance of the lease and the proposed holder of the pledge or encumbrance must be approved in advance by the Director and that a pledge or encumbrance may only grant the holder the right, in the event of a foreclosure, to assume the responsibilities of the lessee under the lease or to select a new lessee subject to the approval of the Director. Pledges or encumbrances may not grant the holder the right to alter or amend in any manner the terms of the lease.

(m) All leases entered into under this part will contain provisions stating to the effect that fulfillment of any obligations of the government under the lease is subject to the availability of appropriated funds. No lease issued under authority of this part shall entitle the lessee to claim benefits under the Uniform Relocation Assistance Act of 1970 (Pub. L. 91–646). All leases entered into under the authority of this part shall require the lessee to waive any such benefits. All leases entered into under this part shall contain provisions granting the Director and the Comptroller General access to the records of the lessee as necessary for lease administration purposes and/or as provided by applicable law.

§ 18.13 Have information collection procedures been followed?

(a) As required by 5 CFR 1320.8(d)(1), NPS is soliciting public comments as to: Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility; the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate electronic, mechanical, or other forms of information technology. A federal 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.

(b) The public reporting burden for the collection of information for the purpose of preparing a bid or proposal in response to a lease solicitation is estimated to average 40 hours per large proposal and 20 hours for small proposals or bids. Please send comments regarding this burden or estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: May 30, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–30866 Filed 12–11–00; 8:45 am]

BILLING CODE 4321–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA–00–01; FRL–6915–5]

Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM_{10}) Nonattainment Area

AGENCY: Environmental Protection Agency (EPA or we).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the public comment period on EPA's notice of proposed rulemaking ''Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM_{10}) Nonattainment Area,'' published on November 16, 2000 at 65 FR 69275. The original comment period closed on December 1, 2000. The new comment period will begin today and end on December 27, 2000. EPA is

also announcing that there will be an informational meeting to present an overview of the issues involved in the proposal and to provide an opportunity for the public to ask questions regarding the proposal.

DATES: All comments regarding EPA's proposed rulemaking published on November 16, 2000 must be received in writing on or before close of business on December 27, 2000.

ADDRESSES: Submit written comments to Donna Deneen, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. You may view documents supporting this action during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air Quality, at (206) 553–6706.

SUPPLEMENTARY INFORMATION: On November 16, 2000, we solicited public comment on a proposal to find that the Wallula nonattainment area has not attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM_{10}) by the attainment date of December 31, 1997, as required by the Clean Air Act. If EPA takes final action on this proposal, the Wallula PM_{10} nonattainment area will be reclassified by operation of law as a serious PM_{10} nonattainment area. *See* 65 FR 69275. In the proposal, we stated that EPA would accept public comments on the proposal until December 1, 2000.

During the public comment period that ended December 1, 2000, numerous commenters asked for an extension of the public comment period. In light of the significant public interest in the proposal, as evidenced by the letters EPA has received to date, we are extending the public comment period to December 27, 2000, to provide additional time for interested parties to submit written comments. All written comments received by EPA by December 27, 2000, will be considered in our final action.

In addition, based on the strong public interest in the proposal, there will be an informational meeting regarding the proposal. The meeting, which has not yet been scheduled, will provide an opportunity for EPA to explain to the community the basis for its proposal and an opportunity for the community to ask questions of EPA. Comments on the proposal must be submitted in writing to the EPA address listed above on or before December 27th, 2000. There will also be an opportunity to submit written comments at the informational meeting. The time, date, and location of the informational meeting will be announced in local newspapers.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: December 4, 2000.

Randall F. Smith,

Acting Regional Administrator, Region 10.

[FR Doc. 00–31615 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 61 and 69

[CC Docket No. 96–262; DA 00–2751]

CLEC Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks additional comment in connection with an ongoing FCC proceeding considering whether and how to reform the manner in which competitive local exchange carriers (CLECs) may tariff the charges for the switched local exchange access service that they provide to inter-exchange carriers (IXCs). Specifically, it seeks comment on the possibility of a rural exemption to a benchmarking mechanism under consideration and information about the level of CLEC access charges.

DATES: Submit comment on or before December 27, 2000.

Submit reply comments on or before January 11, 2001.

ADDRESSES: Send comments to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., SW., Room TW–A325, Washington, DC 20554. Or comments may be filed electronically via the Internet at *http://www.fcc.gov/e-file/ecfs.html*.

FOR FURTHER INFORMATION CONTACT: Scott K. Bergmann, 202–418–0940, or Jeffrey H. Dygert, 202–418–1500.

SUPPLEMENTARY INFORMATION: The FCC's Common Carrier Bureau (the Bureau) seeks comment on the following issues.

Scope of a Rural Exemption to Benchmarked Rates: Many of the comments previously submitted in the access charge reform docket have advocated establishing a benchmark for CLEC access charges so that charges at or below the benchmark would be presumed to be just and reasonable. These proposals have suggested a benchmark that could apply to a broad range of CLECs with widely varying cost characteristics and operating in many different markets.

It may be problematic to limit all CLECs to a single benchmarked rate, regardless of the characteristics of the market that they serve. Thus, the Commission has previously raised the prospect that a benchmark might vary depending on whether the CLEC serves high cost areas or low cost areas. The Bureau seeks additional comment on whether and how to create a ''rural exemption'' that would prevent a CLEC operating in a rural or high-cost areas from being subject to a benchmark that may be more appropriate for CLECs doing business in more concentrated, urbanized areas. Is such an exemption necessary? How should the Commission define the types of areas in which such a rural exemption would be available to CLECs? Can the definition be premised on the Communications Act's definition of ''rural telephone company''? 47 U.S.C. 154(37). Should the exemption apply to all areas that fall outside of the defined metropolitan statistical areas? Should the availability of a rural exemption turn instead on the overall population density within a particular CLEC's service area, or should it turn on the density of the CLEC's customers within its service area? If population density is the appropriate factor, commenters are requested to propose what density figure should serve as the cut-off for the availability of a rural exemption and to explain why that number is the appropriate one. Should the Commission tie such and exemption to the presence, within the CLEC's service area, of a town or incorporated place with a certain population? Should a CLEC be required to qualify for and receive rural or high-cost universal service support before it could avail itself of such a rural exemption?

How should a rural exemption apply where, within a single service area, a CLEC serves customers that reside in areas of markedly different density? Is it feasible for a CLEC to charge different access rates within a single service area depending on the population density surrounding particular end users? Should the availability of such an exemption be determined by the actual location of a CLEC's customers or by the location of a CLEC's switch or some other portion of its network?

Should a rural exemption be tied to the volume of access traffic generated by a CLEC's customers? Thus, should a

CLEC serving primarily or exclusively a large institution, or some other high-volume user, qualify for the rural exemption? Alternatively, should the availability of the rural exemption be tied to the number or type of a CLEC's customers? The Bureau also solicits any additional comments that may bear on the appropriate definition or limitation of a rural exemption to benchmark rates for CLEC access service. Specifically, comment is invited on the proposed definitions for a rural exemption submitted, as ex partes in this docket, by the Rural Independent Competitive Alliance and by Sprint Corporation.

CLEC Access Rates: The Bureau seeks additional information on how CLEC access rates compare to ILEC rates. For example, should the multi-line business presubscribed interexchange carrier charge (PICC) or other charges be included in ILEC access revenue when comparing incumbents' and competitors' rates for switched access service? Additional specific information is also sought on the level of CLEC access rates. Thus, for example, interested parties are requested to file with the Commission surveys or other data regarding the range of access charges imposed by either CLECs or ILECs.

The Commission has previously conducted an initial regulatory flexibility analysis relating to the issue of CLEC access charges. Pricing Flexibility Order and Notice, 64 FR 51280 (Sept. 22, 1999). The Bureau invites further comment on it at this time. Additionally, the Bureau invites comment on significant alternatives for the reform of CLEC access charges that would: establish different compliance requirements for small entities; clarify, consolidate or simplify compliance requirements for small entities; or exempt small entities from coverage.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedures, Communications common carrier, telecommunications.

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Part 69

Communications common carriers, Access charges.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

[FR Doc. 00–31713 Filed 12–11–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 0002180448-0295-02; I.D. 013100A]

RIN 0648-AN59

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy for a Letter of Authorization (LOA) to take a small number of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL (DDG-81) in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. In order to authorize the take, NMFS must determine that the taking will have no more than a negligible impact on the affected species and stocks of marine mammals and issue regulations governing the take. NMFS proposes regulations to govern the take and invites comment on the application and the proposed regulations.

DATES: Comments and information must be postmarked no later than January 26, 2001.Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Address comments to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application and/or a list of references used in this document may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A limited number of copies of the Navy's Draft Environmental Impact Statement (DEIS) for conducting the shock trial are also available through this contact. To be placed on the mailing list for receiving a copy of the Final Environmental Impact Statement (FEIS), please contact Will Sloger, U.S. Navy, at (843) 820-5797.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713-2055, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On January 12, 2000, NMFS received an application for an LOA under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take a small number of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. A final decision on the location for the shock trial will be made by the Navy, based, in part, on findings and determinations made under the National Environmental Policy Act (NEPA).

Section 2366, Title 10, United States Code (10 U.S.C. 2366) requires realistic survivability testing of a covered weapon system to ensure the vulnerability of that system under combat conditions is known. (In this case, the covered weapon system is the USS WINSTON S. CHURCHILL.) Realistic survivability testing means testing for the vulnerability of the ship in combat by firing munitions likely to be encountered in combat with the ship configured for combat. This testing is commonly referred to as ≥Live Fire Test & Evaluation≥(LFT&E). Realistic testing by firing live ammunition at the ship or detonating a real mine against the ship's

hull, however, could result in the loss of a multi-million dollar Navy asset. Therefore, the Navy has established an approved LFT&E program to complete the vulnerability assessment of ships as required by 10 U.S.C. 2366. The LFT&E program includes three major areas that together provide for a complete and comprehensive evaluation of the survivability of ships in a near miss, underwater explosion environment. These areas are computer modeling and analysis, component testing, and an at-sea ship shock trial. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions as only the at-sea shock trial can provide the real-time data necessary to fully assess ship survivability.

A shock test is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The USS WINSTON S. CHURCHILL is the third ship in a new Flight of 23 ARLEIGH BURKE (DDG 51)-class guided missile destroyers being acquired by the Navy. (A Flight is a subset of a class of ships to which significant modifications/upgrades have been made.) These ships are referred to as the Flight IIA ships and they represent the largest single upgrade to the original DDG 51-class destroyer.

The USS JOHN PAUL JONES (DDG 53) was shock tested off the coast of California in June 1994 to assess the survivability of the original DDG 51-class destroyer. Flight IIA ships are significantly different from the original DDG 51-class destroyers in their design. Major structural changes include the addition of a helicopter hangar, Vertical Launch System foundation changes, and raising the aft radar arrays. Major equipment changes include the addition of a ship-wide Fiber Optic Data Multiplexing System, a Zonal Electrical Power Distribution System involving the addition of switchboards and load centers throughout the ship, and the widespread use of commercial equipment in various mission critical systems to reduce the cost of the ships. Typically the lead ship of a new class or major upgrade is shock tested. The USS WINSTON S. CHURCHILL was selected as the shock trial ship because it has additional design changes that will not be included in the first two Flight IIA ships, and therefore, it is more representative of the Flight.

The Navy's proposed action is to conduct a shock trial of the USS WINSTON S. CHURCHILL at an offshore, deep-water location. The ship would be subjected to a series of three-four 4,536 kg (10,000 lb) explosive charge detonations sometime between 1 May and 30 September, 2001. Three detonations are needed to collect adequate data on survivability. A fourth detonation would be conducted by the Navy only if one of the planned three detonations fails to provide technically acceptable data (e.g., due to equipment failure or some other technical problem).

The ship and the explosive charge would be brought closer together with each successive detonation to increase the severity of the shock. This gradation in severity would ensure that the survivability of the ship and its systems is fully assessed and the point at which failure modes begin is accurately determined. It would also reduce the chance of significant damage at the highest severity detonation. The shock trial would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the ship's systems prior to the ship experiencing the next level of shock intensity.

Comments and Responses

On March 3, 2000 (65 FR 11542), NMFS published a notice of receipt of the Navy's application for a small take exemption and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC), the Humane Society of the United States (HSUS), and the Commonwealth of Virginia (Commonwealth). Because the MMC and the Commonwealth concerns were limited to statements made in the Navy's DEIS for shock testing, and not on the content of the Navy's LOA application, their concerns will be addressed in the Navy's FEIS for shock testing and not in this document.

Comment 1: The HSUS strongly objects to the Navy's de facto establishment of a physiological sound pressure level (SPL) definition of Level B (acoustic) harassment under the MMPA. The HSUS considers that temporary threshold shift (TTS) in the hearing of marine mammals subjected to noise from the detonation should be considered Level A harassment (i.e., injury), not Level B. The HSUS believes that cetaceans suffering from TTS could for some time fail to hear approaching boats or predators or fail to detect prey or mates. This, HSUS contends is clearly more than Level B harassment, which is any act that merely has the potential to disturb. The HSUS claims that this determination is precedent-setting.

Response: While NMFS agrees the Navy's establishment of an SPL definition for Level B harassment is precedent-setting, NMFS believes that TTS should be considered as Level B harassment. This is fully supported by the science as described in detail in the Navy DEIS and this document, and proceeds logically from the criteria used by the Navy in the FEIS for the USS SEAWOLF shock trial based upon scientific documentation provided in that latter document. In that regard, NMFS recommends reviewers compare the Navy's FEIS for the USS SEAWOLF shock trial and the DEIS for the USS WINSTON CHURCHILL shock trial.

NMFS scientists and other scientists are in general agreement that TTS is not an injury (i.e., does not result in tissue damage), but is a temporary impairment to hearing that may last from a few minutes to a few days, depending upon the level and duration of exposure. The Navy, in its DEIS and small take application, states that TTS could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. That these short-term effects would lead to increased mortality is speculative and, to our knowledge, unsupported scientifically. Lost feeding and mating opportunities is considered by NMFS to be Level B harassment takings if the response is significant for these biologically important activities.

Although science supports that TTS is not an injury (i.e., Level A harassment), because scientists have noted that a range of only 15-20 dB may exist between onset TTS and the onset of a permanent elevation in hearing sensitivity (termed permanent threshold shift (PTS)), which NMFS considers to be an injury (Level A harassment), TTS must be considered to be in the upper portion of the Level B harassment zone (near the lower level of the Level A harassment zone). However, even though TTS is not an injury placing it

in the upper level of the Level B harassment zone is precautionary.

NMFS recommends that commenters review Appendix E of the Navy's DEIS for the scientific basis supporting its determination that TTS is a Level B harassment taking and PTS is Level A harassment and provide NMFS with comments on this determination for consideration during this rulemaking.

Comment 2: The HSUS contends that neither the Navy's use of a received level of 182 dB (re 1 uPa²-sec) as the SPL that will induce TTS, nor that it represents a de facto definition of Level B harassment, has been subject to public notice or public comment prior to this Letter of Authorization (LOA) request.

Response: The use of an energy-based TTS-criterion of 182 dB (re 1 μPa²-sec) has been subject to public review previously. The rulemaking for the USS SEAWOLF shock trial (63 FR 66069, December 1, 1998), resulted in an improvement on the determinations made in regard to the shock trial for the USS JOHN PAUL JONES (59 FR 5111, February 3, 1994). In the USS SEAWOLF shock trial rulemaking NMFS concurred with the Navy's findings that, in terms of mammal hearing, a better measure for determining impacts may be total energy received in 1/3-octave frequency bands (i.e., the approximate filter bandwidth of the hearing system) within the integration time of the ear. NMFS determined that, as pulsed sound sources with differing peak pressures could deliver the same energy over a certain time period, the acoustic harassment criterion could be improved over the standard 160 dB (re 1 μPa @ 1 m) impulse measurement used during shock testing the USS JOHN PAUL JONES and other explosive detonation events. In the USS SEAWOLF rulemaking, NMFS determined that TTS meets the definitions of both Level A and Level B harassment found in the MMPA since, on a cellular level, TTS could be considered a very slight ''injury'' (i.e., Level A harassment) in the sense of damage to hair cells in the ear and since TTS is a temporary hearing loss, it could also lead to a temporary disruption of behavioral patterns (Level B harassment). Under the 182 dB (re 1 uPa²-sec (energy)) criterion, separate harassment ranges were calculated for odontocetes and mysticetes based on their differing sensitivity to low frequencies.

Following the USS SEAWOLF small take rulemaking, NMFS published a notice of issuance of an Incidental Harassment Authorization (IHA) to the U.S. Air Force for taking small numbers of dolphins incidental to explosives testing at Eglin Air Force Base (63 FR 67669, December 8, 1998). That document noted that NMFS considers harassment of marine mammals to occur (from an explosive-generated shockwave and its acoustic signature) between 5 psi-msec out to a transmission distance where a noise level of 180 dB re 1 uPa²-sec. (It should be noted that the Air Force used a level of 180 dB (re 1 uPa²-sec), because that was the level it used in its modeling for determining distances for safety zones.) Therefore, the area between those two levels (i.e., 5 psi-msec and 182 dB re 1 uPa²-sec) was considered as the zone of incidental harassment which would result in a non-injurious physiological response on the part of the mammals.

What is new in the current rulemaking is the Navy's interpretation that TTS should be considered only as Level B harassment and not as both a Level A and Level B harassment. That approach is fully explained in the Navy's DEIS, and especially in Appendix E of that document. NMFS believes that the information contained in the Navy's DEIS is the best scientific information to date on this subject and therefore concurs with the Navy's determination. During this rulemaking, NMFS welcomes comments relating to scientific determinations made on this issue.

Comment 3: HSUS is disturbed that NMFS has accepted the Navy's 182 dB criterion for TTS and that this indicates a change in its implementation of the MMPA, since the only previous mention of it was in a response to a comment on a proposed rule for shock testing the USS SEAWOLF.

Response: See the previous comment. Using 182 dB as the criterion for determining TTS was an integral part of the rulemaking for the USS SEAWOLF shock trial small take authorization. The Navy provided significant detail in its USS SEAWOLF DEIS and small take application to explain why using the 182 dB criterion was considered an improvement over use of a pressure-induced criterion of 160 dB, used previously for the shock trial of the USS JOHN PAUL JONES (59 FR 5111, February 3, 1994). NMFS subsequently adopted this information as the best scientific information available for assessing harassment impacts on marine mammal stocks from explosions during the shock trial of the USS SEAWOLF.

Comment 4: Based on the statement made in the previous two comments, the HSUS believes that this represents a significant change in implementation of the MMPA, and that prior notice and opportunity for public comment should have been given for this change pursuant to the requirements of section 553(b) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)). The HSUS states that NMFS' ''acceptance'' or ''concurrence'' with the Navy definition falls squarely within the definition of a ''rule'' in section 552 of the APA. To permit the continued acceptance and subsequent use of this standard is to acquiesce to a continuing violation of the letter and spirit of the APA.

Response: Because part of this proposed rulemaking is the criterion NMFS proposes to use to determine levels of harassment and injury incidental to takings of marine mammals by the USS WINSTON CHURCHILL shock trial there is no violation of section 553(b) of the APA. NMFS invites comment on the criterion for assessing impacts from explosives on marine mammals.

Comment 5: The HSUS also notes that the Navy is using a received level of 182 dB (re 1 uPa²-sec) as the SPL that will induce TTS in cetaceans and therefore is the outer SPL for Level B harassment. This SPL is unsubstantiated empirically (i.e., the threshold of hearing in many cetaceans is unknown and certainly the SPL that will induce TTS has never been measured).

Response: NMFS clarifies that it and the Navy are using a dual criterion of (1) an energy-based TTS criterion of 182 dB (re 1 uPa²-sec) in any 1/3 octave band, and (2) 12 psi peak pressure, cited by Ketten (1995) as associated with ''a safe outer limit for the 10,000 lb (4,536 kg) charge for minimal, recoverable auditory trauma'' (i.e., TTS). The harassment range is the minimum distance at which neither criterion is exceeded. However, the 182 dB energy criterion is usually the determining factor in the calculated ranges (Navy, 1999, Appendix E).

While NMFS agrees that the SPL that would cause TTS in cetaceans by explosives has not been tested empirically on live cetaceans, for reasons explained in the application and in detail in the Navy's DEIS on this action, the Navy has calculated TTS from explosives based upon empirical research on bottlenose dolphins and white whales conducted by Ridgway *et al.* (1997) and Schlundt *et al.* (2000). NMFS believes that this is the best scientific information available to date on this issue. Because Ridgway *et al.* (1997) and Schlundt et al. (2000) determined the SPL where TTS first begins (i.e., full recovery of hearing occurred within a few minutes), NMFS believes that establishing a level for TTS at onset of that impairment, is precautionary.

Comment 6: The HSUS requests NMFS deny the Navy's LOA request until such time as the Navy completes a revised DEIS and in fact completes a FEIS.

Response: NMFS does not believe that delaying the small take authorization process until completion of NEPA documentation, as suggested by the HSUS, would be appropriate. Both the Council on Environmental Quality regulations (40 CFR 1502.5(d)) and NOAA's NEPA guidelines provide for proposed regulations to accompany a draft NEPA document. As a cooperating agency in the preparation of the DEIS, which NMFS may adopt as its own NEPA document, the Navy's DEIS is the key NEPA document for the NMFS action. Not beginning the small take authorization/regulatory process until completion of NEPA requirements would lead to unnecessary and potentially extensive delays in processing applications, a key problem previously recognized by Congress in 1994, when it amended the MMPA to expedite small take authorizations. However, under NEPA, NMFS may not make final regulations governing the taking of marine mammals, incidental to the shock testing the USS WINSTON CHURCHILL, effective for at least 30 days after the U.S. Navy releases a FEIS for the shock trial.

Description of Habitat and Marine Mammals Affected by Shock Testing

A description of the U.S. Atlantic and Gulf of Mexico coast environment, its marine life and marine mammal abundance, distribution and habitat can be found in the DEIS on this subject and is not repeated here. Additional information on Atlantic and Gulf coast marine mammals can be found in Waring *et al*. (1999).

Affected Marine Mammals

A summary of the marine mammal species found in each of the three areas which may be selected by the Navy for shock testing is presented here. A complete list of potentially affected marine mammal species can be found later in this document. For more detail on marine mammal abundance, density and the methods used to obtain this information, reviewers are requested to refer to either the Navy application or the Navy's DEIS.

Mayport, FL

Up to 29 marine mammal species may be present in the waters off Mayport, FL, including seven mysticetes and 22 odontocetes. Mysticetes are unlikely to occur at Mayport during the May through September time period. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, four species of beaked whales, and 15 species of dolphins and porpoises.

Norfolk, VA

Up to 35 marine mammal species may be present in the waters off Norfolk, VA, including 7 mysticetes, 27 odontocetes, and 1 pinniped. The fin whale is the mysticete most likely to occur in the test area. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, six species of beaked whales, and 18 species of dolphins and porpoises.

Pascagoula, MS

Up to 29 marine mammal species may occur in the waters off Pascagoula, MS, including seven mysticetes, 21 odontocetes, and one exotic pinniped. With the exception of Bryde's whale, mysticetes are considered unlikely to occur at Pascagoula. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, four species of beaked whales, and 14 species of dolphins and porpoises.

Potential Impacts to Marine Mammals

Mortality and Injury

Potential impacts on several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Marine mammals may be killed or injured as a result of the explosive blast due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are more likely to be most severe in near surface waters above the detonation point where the reflected shock wave creates a region of negative pressure called ''cavitation.'' This is a region of near total physical trauma within which no animals would be expected to survive. Based on calculations in Appendix D of the Navy's DEIS, the maximum horizontal extent of the cavitation region is estimated to be 683 meters (m) (2,240 ft). This region would extend from the surface to a maximum depth of about 23 m (77 ft). A second criterion for mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range. The range predicted for a small marine mammal (e.g., a dolphin calf) is 1.35 kilometers (km) (0.73 nautical miles (nm)) from the detonation point. For estimating the impact from the detonation(s), NMFS and the Navy presume that 100 percent of the marine mammals within this radius would be killed, even though larger mammals may survive their injury from the shock wave.

NMFS and the Navy have established a dual criteria for determining non-lethal injury: (1) The onset of slight lung hemorrhage, and (2) a 50-percent probability level for eardrum rupture. These are injuries from which animals would be expected to recover on their own. The range predicted for the onset of slight lung hemorrhage is 2.25 km (1.22 nm). The range predicted for 50-percent probability of eardrum rupture varies with the mammal's depth in the water column; the highest value being 2.16 km (1.17 nm) for a mammal at a depth of 335 m (1,100 ft). The criterion with the greater range (onset of slight lung hemorrhage) was used to estimate the number of potential non-lethal injuries. It is presumed that 100 percent of the marine mammals within this radius would be injured.

Some percentage of the animals with eardrum rupture or slight lung hemorrhage could eventually die from their injuries. However, as noted previously, the mortality calculation based on extensive lung hemorrhage presumes that 100 percent of the animals within a radius of 1.35 km (0.73 nm) would be killed. At that range, the probability of eardrum rupture would be less than 50 percent and the threshold for onset of slight lung hemorrhage would be exceeded only in the upper 61 m (200 ft) of the water column (Navy, 2000). While all animals within this radius are assumed to be killed, in reality some are unlikely to be even injured.

Finally, the Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur.

Incidental Harassment

TTS has been defined by NMFS as one form of harassment (60 FR 28379, May 31, 1995). TTS is a change in the threshold of hearing (the quietest sound an animal can hear), which could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. As such, it could result in a temporary disruption of behavioral patterns, as specified in the statutory definition of Level B harassment.

Since the small take authorization and Navy's FEIS for the USS SEAWOLF shock trial (63 FR 66069, December 1, 1998), the Navy has conducted an extensive analysis of the scientific literature, producing a good perspective on the physiological effects of TTS as well as its use in human damage risk criteria (DRC) by the Occupational Health and Safety Administration and in the National Institute for Occupational Safety and Health's (NIOSH) Criteria for Recommended Noise Standard (NIOSH, 1998). The best research to date indicates that the distortion and dysfunction of sensory tissue observed during TTS are only temporary and fully reversed upon recovery (i.e., occasional TTS produces no permanent tissue damage to the ear, only the temporary nondestructive impairment of tissue that fully recovers). This type of temporary nondestructive impairment as well as the use of TTS in human DRC are the scientific basis for no longer considering TTS as Level A harassment. Therefore, NMFS and the Navy concur that an impairment of hearing-related behavior during periods of TTS is the most reliable and meaningful estimate of Level B harassment for explosive detonation events.

Based upon information provided in the Navy's application for a small take authorization and in greater detail in Appendix E of the Navy's DEIS, a dual criterion for Level B acoustic harassment has been developed: (1) an energy-based TTS criterion of 182 dB re 1 uPa^2-sec derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 lbs/in^2 (psi) peak pressure cited by Ketten (1995) as associated with a ''safe outer limit for the 10,000 lb (4,536 kg) charge for minimal, recoverable auditory trauma'' (i.e., TTS). The harassment range, therefore, is the minimum distance at which neither criterion is exceeded.

Using the 182 dB (re 1 uPa^2-sec) criterion, the Navy calculated separate ranges for odontocetes and mysticetes based on their differing sensitivity to low frequency sounds. For those odontocetes which are ''high-frequency specialists,'' all frequencies greater than or equal to 100 Hz were included. For mysticetes, which are ''low-frequency specialists,'' the frequency range was extended down to 10 Hz. Water depth is also an important factor in calculating harassment ranges. However, regardless of water depth, the Navy chose the highest values for TTS harassment ranges. Expected numbers of marine mammals within these radii (and thereby potentially receiving a TTS harassment impact) were calculated using the mean densities for the species expected in each area, and adjusting those estimates to account for submerged (undetectable) individuals. These ranges are as follows:

	Odontocetes	*Mysticetes*
Mayport	13.3 - 25.2 km (7.2 - 13.6 nm)	24.7 - 27.8 km (13.0 - 15.0 nm)
Norfolk	16.7 - 32.8 km (9.0 - 17.7 nm)	25.9 - 42.6 km (14.0 - 23.0 nm)
Pascagoula	15.9 - 24.6 km (8.6 - 13.3 nm)	22.8 - 29.6 km (12.3 - 16.0 nm)

Estimated Level of Marine Mammal Takings

While the Navy does not expect that any lethal takes will result from these detonations (because of mitigation measures taken), calculations indicate that the Mayport site has the potential to result in up to 4 mortalities, 6 non-serious injuries, and 2,885 takings by harassment. The Norfolk site has the potential to result in 7 mortalities, 12 non-serious injuries, and 14,640 takings by harassment. The Pascagoula site has the potential to result in up to 3 mortalities, 4 injuries, and 3,132 takings by harassment.

Summary of Proposed Mitigation and Monitoring Measures

The Navy's proposed action includes mitigation and monitoring that would minimize risk to marine mammals and sea turtles. These mitigation and monitoring measures are as follows:

(1) Through pre-detonation aerial surveys, the Navy would select a primary and two secondary test sites within the test area where potentially, marine mammals and sea turtle populations are the lowest, based on the results of aerial surveys conducted one to two days prior to the first detonation;

(2) Pre-detonation aerial monitoring would be conducted on the day of each detonation to evaluate the primary test site and verify that the safety range and buffer zone are free of visually detectable marine mammals and other critical marine life (If marine mammals are detected in the primary test area, the Navy proposes to survey the secondary areas for marine mammals, and may move the shock test to one of the other two sites);

(3) Independent marine mammal biologists and acousticians would monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if (a) any marine mammal, sea turtle, large sargassum raft or large concentration of jellyfish is visually detected within a safety zone of 3.7 km (2.0 nm), (b) any marine mammal is acoustically detected within a safety zone of 4.16 km (2.25 nm), or (c) any large fish school, or flock of seabirds is detected within a safety zone of 1.85 km (1 nm);

(4) The area would be monitored visually (aerial and shipboard monitoring) and acoustically before each test and detonation would not occur if any marine mammal or sea turtle is within a buffer zone of an additional 1.85-km (1.0-nm) buffer zone, unless the marine mammals are on a course within the buffer zone that is taking them away from the 3.7-km (2.0-nm) safety zone, except that detonation would not occur if a listed marine mammal is detected within the buffer zone, and subsequently cannot be detected, until sighting and acoustic teams have searched the area for 2.5 hours (approximately 3 times the typical large whale dive duration). If a northern right whale is seen, detonation would not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present;

(5) Detonation would not occur if the sea state exceeds 3 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), or the visibility is not 5.6 km (3 nm) or greater, and the ceiling is not 305 m (1,000 ft) or greater;

(6) Detonation would not occur earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for pre- and post-detonation monitoring; and

(7) The area would be monitored for 48 hours after each detonation, and for 7 days following the last detonation, to

find, document and track any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as a result of the test, or if any marine mammals or sea turtles were observed in the safety range immediately after a detonation, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

Detailed descriptions of the measures for mitigation and monitoring the shock test can be found in Section 5 of the Navy's DEIS.

Reporting

Within 120 days of the completion of shock testing, the Navy would submit a final report to NMFS. This report would include the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Costs and Benefits

In addition to allowing the Navy to take a small number of marine mammals incidental to conducting the shock trial, this rule would require the Navy to provide NMFS and the public with information on the shock trial's effect on the marine environment, especially on marine mammals. Besides the improved survivability of U.S. armed forces at sea and the Navy's multi-billion dollar ship assets, this rule would result in NMFS and the public being provided this information. NMFS believes that obtaining this information is extremely important because shock trials are not the only explosive noise source in the world's oceans, and the scientific findings resulting from monitoring is likely to be directly applicable to future activities. Also, the mitigation measures for protecting marine mammals, sea turtles and other marine life that would be required by the rule will result in a substantial reduction in impacts on these animals. Without these regulations, these mitigation measures could not be required to be undertaken by the U.S. Navy. Also, the cost to the Navy to comply with the mitigation and monitoring measures that would be required by this rule cannot be fully determined at this time. NMFS believes that the cost would be approximately $1 million.

NEPA

On December 10, 1999 (64 FR 69267), a notice of availability of the Navy DEIS was published. The public comment for that document was extended until March 31, 2000, by notification in the **Federal Register** (65 FR 4236). NMFS is a cooperating agency, as defined by the CEQ (40 CFR 1501.6), in the preparation of this DEIS.

Endangered Species Act (ESA)

The U.S. Navy requested consultation with NMFS under section 7 of the ESA on this action. In that regard, NMFS concluded consultation with the Navy on this activity on October 10, 2000. If an authorization to incidentally take listed marine mammals is issued under the MMPA for this action, NMFS will complete consultation under the ESA on the regulations and the LOA and issue an Incidental Take Statement under section 7 of the ESA.

Preliminary Conclusions

Based on the scientific analyses detailed in the ONR DEIS and the Scripp' application, NMFS has preliminarily concluded that the incidental taking of marine mammals resulting from the shock trial of the USS WINSTON CHURCHILL in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS would result in only small numbers (as the term is defined in § 216.103) of marine mammals being taken, have no more than a negligible impact on the affected marine mammal stocks or habitats and not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals.

Information Solicited

NMFS requests interested persons to submit comments on the proposed regulations and on the Navy's application for taking marine mammals incidental to conducting the shock trial. NMFS requests that commenters review the Navy's application and not just submit comments based solely on this document.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It will also affect a small number of contractors providing services related to reporting the impact of the shock trial on marine mammals. Some of the affected contractors may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Accordingly, the analytical requirements of the Regulatory Flexibility Act (RFA) do not apply and a a regulatory flexibility analysis has not been prepared.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, Natioal Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart N is revised to read as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Sec.

Subpart N—Taking of Marine Mammals Incidental to Shock Testing the USS WINSTON S. CHURCHILL by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

216.151 Specified activity, geographical region, and incidental take levels.
216.152 Effective dates.
216.153 Permissible methods of taking; mitigation.
216.154 Prohibitions.
216.155 Requirements for monitoring and reporting.
216.156 Modifications to the Letter of Authorization.

Subpart N—Taking of Marine Mammals Incidental to Shock Testing the USS WINSTON S. CHURCHILL by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the U.S. Atlantic Coast or Gulf of Mexico offshore Mayport, FL, Norfolk, VA, or Pascagoula, MS, for the purpose of shock testing the USS SEAWOLF.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Blue whale (*Balaenoptera musculus*); fin whale (*B. physalus*); sei whale (*B. borealis*); Bryde's whale (*B. edeni*); minke whale (*B. acutorostrata*); humpback whale (*Megaptera novaeangliae*); northern right whale (*Eubalaena glacialis*); sperm whale (*Physeter macrocephalus*); dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whales (*Globicephala melas, G. macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); Pantropical spotted dolphin (*S. attenuata*); striped dolphin (*Stenella coeruleoalba*); spinner dolphin (*S. longirostris*); Clymene dolphin (*S. clymene*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); killer whale (*Orcinus orca*); false killer whale (*Pseudorca crassidens*); pygmy killer whale (*Feresa attenuata*); Fraser's dolphin (*Lagenodelphis hosei*); harbor porpoise (*Phocoena phocoena*); melon-headed whale (*Peponocephala electra*); northern bottlenose whale (*Hyperoodon ampullatus*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); Sowerby's beaked whale (*M. bidens*); True's beaked whale (*M. mirus*); common dolphin (*Delphinus delphis*); Atlantic white-sided dolphin (*Lagenorhynchus acutus*); and harbor seals (*Phoca vitulina*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total of no more than 7 mortalities, 12 injuries, and 14,640 takings by harassment for detonations in the Norfolk, VA area; 4 mortalities, 6 injuries, and 2,885 takings by harassment in the Mayport area; or 3 mortalities, 4 injuries, and 3,132 takings by harassment at the Pascagoula site, except that the taking by serious injury or mortality for species listed in paragraph (b) of this section that are also listed as threatened or endangered under § 17.11 of this title, is prohibited.

§ 216.152 Effective dates.

Regulations in this subpart are effective from April 1, 2001, through September 30, 2001.

§ 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, injury or mortality in the course detonating up to 4 4,536 kg (10,000 lb) conventional explosive charges within the area described in § 216.151(a) provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or within the buffer zone prescribed in the Letter of Authorization and on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone or on a course within the buffer zone that is taking them away from the safety zone.

(2) If a marine mammal listed under the Endangered Species Act is detected within the buffer zone, and subsequently cannot be detected, detonation must not occur until sighting and acoustic teams have searched the area for 2.5 hours.

(3) If a northern right whale is seen, detonation must not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present;

(4) If weather and/or sea conditions as described in the Letter of Authorization preclude adequate aerial surveillance, detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(5) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the appropriate Regional Director at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, 48-72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of

this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(f) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS WINSTON S. CHURCHILL. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.156 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.151(a), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

[FR Doc. 00–31624 Filed 12–11–00; 8:45 am]

BILLING CODE: 3510–22–S

Notices

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on January 8 and 9, 2001.

DATES: Monday, January 8, 2001, from 9 a.m. to 5 p.m., and Tuesday, January 9, 2001 from 8:30 a.m. to 5 p.m..

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Monday, January 8, 2001, from 9 a.m. to 5 p.m., and Tuesday, January 9, 2001, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2000 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2001 pension actuarial examination and the May 2001 basic actuarial examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2000 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 8 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m.. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 30, 2000, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SC:DOP, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: November 27, 2000.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 00–31502 Filed 12–11–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Provincial Advisory Committees

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of advisory committee renewal.

SUMMARY: In response to the continued need of the Department of Agriculture and the Department of the Interior for advice on coordination and implementation of the Record of Decision of April 13, 1994, for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, the Departments have renewed the Provincial Advisory Committees for 12 provinces. The purpose of the Provincial Advisory Committees is to provide advice on coordinating the implementation of the Record of Decision and to make recommendations promoting the integration and coordination of forest management activities between Federal and non-Federal entities.

FOR FURTHER INFORMATION CONTACT: Jonathan Stephens, Planning Specialist, Forest Service, USDA, (202) 205–0948.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Department of Agriculture, in consultation with the Department of the Interior, has renewed the Provincial Advisory Committees (PACs), which will advise the Provincial Interagency Executive Committee (PIEC). The purpose of the PIEC is to facilitate the coordinated implementation of the Record of Decision of April 13, 1994. The PIEC consists of representatives of the following Federal agencies: the Forest Service, the Bureau of Land Management, the Fish and Wildlife Service, the National Marine Fisheries Service, the National Park Service, the Bureau of Indian Affairs, the Environmental Protection Agency, the Army Corps of Engineers, the Natural Resource Conservation Service, and the Geological Survey's Biological Resources Division.

Ecosystem management at the province level requires improved coordination among governmental entities responsible for land management decisions and the public those agencies serve. The PACs provide

advice and recommendations to promote integration and coordination of forest management activities between Federal and non-Federal entities. Each PAC will provide advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province (provinces are defined in the Record of Decision at E–19).

The chairing responsibility of the PACs will alternate annually between the Forest Service's and the Bureau of Land Management's representative. When the Bureau of Land Management is not represented on the PIEC, the Forest Service representative will serve as chair. The chair, or a designated agency employee, will serve as the Designated Federal Official under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.).

The renewal of the PACs does not require an amendment of Bureau of Land Management or Forest Service planning documents because the renewal does not affect the standards and guidelines or land allocations. The Bureau of Land Management and Forest Service will provide further notices, as needed, for additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the Record of Decision.

Equal opportunity practices are followed in all appointments to the advisory committees. To ensure that the recommendations of the PACs have taken into account the needs of diverse groups served by the Departments, membership will include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: October 23, 2000.

Paul W. Fiddick,

Assistant Secretary for Administration.

[FR Doc. 00–31538 Filed 12–11–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request the reinstatement and revision of a previously approved information collection. This information is used by CCC and FSA to issue payments or other disbursements. The program under which payments are made are authorized by the Agricultural Act of 1970, the Commodity Credit Corporation Charter Act, the Food Security Act of 1985, and the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before February 12, 2001 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David Tidwell, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–4542.

SUPPLEMENTARY INFORMATION:

Title: Payer's Request for Identifying Number.

OMB Control Number: 0560–0121.

Expiration Date: October 31, 2000.

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: In order to provide the Internal Revenue Service with proper identification for the processing of tax returns, all producers who receive CCC and FSA program payments must provide FSA with a social security, employer, or IRS identifying number. Form CCC–343, Payer's Request for Identifying Number, will collect this information without regard to whether the payee is required to file a tax return or is covered by social security.

The county FSA office prepares a CCC–343 for each producer who has not furnished a producer ID number. Once the ID number is obtained and provided to the county FSA office, the producer is not requested to provide this information again.

FSA does not make any program payment until a producer furnishes a social security, employer, or IRS identifying number.

Identification of producers allows FSA to provide IRS with identifying numbers for tax collection purposes. Section 6676 of the Internal Revenue Code provides a penalty for failure to furnish an identifying number to a payer required to report such number to the Service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .08 (5 minutes) per response.

Respondents: Producers.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 250 hours.

Proposed topics for comment include: (a) Whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to David Tidwell, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–2415, (202) 720–4542.

Copies of the information collection may be obtained from David Tidwell at the above address.

Signed at Washington, DC, on December 5, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–31623 Filed 12–11–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Proposed Change in Price Support Differentials for Flue-Cured Tobacco, and Invitation to Comment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to set price support differentials for the 2001 crop of flue-cured tobacco, that, because of market conditions, would provide a zero price support rate for tobacco that has not been cured in barns with an

indirect heat source. In order that tobacco can be duly valued for price support purposes, farmers will, if the proposal is adopted, be required to certify whether their barns have an indirect heat source.

DATES: Comments on this proposal should be received by December 27, 2000 to be assured of consideration and should be directed to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Charles Hatcher, Director, Tobacco and Peanuts Division, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0574, Washington, DC 20250–0514, telephone (202) 720–0156 or FAX (202) 418–4270.

SUPPLEMENTARY INFORMATION: Quotas for tobacco production are administered under the Agricultural Adjustment Act of 1938, 7 U.S.C. 1281 *et seq.* Where quotas for a kind of tobacco have been approved by producers of that kind of tobacco, price support is made available for that tobacco under the terms and conditions of Section 106 the Agricultural Act of 1949, 7 U.S.C. 1421, *et seq.* Flue-cured tobacco is one of the kinds of tobacco for which quotas have been approved. Regulations for governing price support and quotas for tobacco are found at 7 CFR parts 723 and 1464.

Price support is made available through non-recourse loans to farmers through a designated producer-member association, which in the case of flue-cured tobacco is the Flue-Cured Tobacco Stabilization Corporation (Stabilization). As such, the loans do not have to be repaid, but rather the tobacco is placed in Stabilization's inventory and Stabilization then attempts to sell the tobacco for the highest price possible. Losses on inventory tobacco are covered by assessments levied against all producers (and buyers) of flue-cured tobacco, irrespective of, in the case of producers, whether that individual producer placed any tobacco under a price support loan.

The average loan rate for the tobacco is set for each crop year under a formula which is set out in Section 106 of the 1949 Act, but, in making those loans, variations for location and other factors are made in the loan amount which is available for an individual lot of tobacco. Such variations in the price support level are known as ''differentials''. They are provided for explicitly in Section 403 of the 1949 Act, which is found at 7 U.S.C. 1423. That section was suspended for commodities other than tobacco for the 1996–2000 crops by Section 171 of the Agricultural Market Transition Act (AMTA), Public Law 104–127, but remains in force for tobacco. Under the provisions of section 403 of the 1949 Act, the Secretary may (and the Secretary has done so consistently for many years) make appropriate adjustment in the support price for differences in grade, type, quality, location and other factors. The adjustments must, insofar as practicable, be made in such manner that the average support price for the commodity will, on the basis of the anticipated incidence of such factors, be equal to the national average level of support determined in accordance with section 106 of the 1949 Act. Using this authority, differentials are established each crop year for quota tobaccos, by kind.

This notice proposes to change the flue-cured tobacco price support differentials effective for the 2001 crop year to provide for differing valuations of tobacco based on the heat source of the barn in which the tobacco is cured. Specifically, it is proposed in this notice that the differentials for the upcoming crop year be adjusted so that flue-cured tobacco cured in barns which use a direct heat source would have a price support value of zero. For ease of reference, and for reasons which are explained below, those barns with a direct heat source will be referred to as ''un-improved'' barns and those with an indirect heat source will be identified as ''improved'' barns. However, those barns which have been built with an indirect heat source would, of course, be treated the same as those which have been converted, or ''improved'' by changing the heat source from a direct source to an indirect source.

The change in differentials set out in this notice is being proposed at the request of Stabilization, the producer-owned association. According to Stabilization, buyers in recent years have increasingly been concerned about flue-cured tobacco cured in barns with direct heat sources because of the desire of buyers to reduce nitrosamines which can form through direct heating. Due to those concerns and as part of a long-term effort to reduce nitrosamines, Stabilization has informed USDA that buyers will no longer, effective with the 2001 crop, buy tobacco cured using direct heat; that is, Stabilization has indicated that the market value of direct-heated tobacco is zero. Recently, however, by a joint enterprise between tobacco buyers and Stabilization, farmers have been provided funding to convert their barns from direct heat to indirect heat.

In the meantime, however, because of these buyer preference and demands, producers, through their association (Stabilization), have requested that the price support value of the tobacco produced in un-improved barns be zero because otherwise, it is feared, the tobacco will go into the price support inventory, will not be marketable, and will produce losses that must be borne by all producers together in the form of the higher ''no net cost assessments,'' referred to above, which, under the terms of the 1949 Act, are designed to help assure that the tobacco program is operated at no net cost to the public other than the costs associated with price support programs in general. Since there is no indication that the market price of the tobacco will be greater than zero, this notice proposes adopting the suggestion of the producer association. However, in proposing to set the differentials at zero for tobacco produced in un-improved barns, the Department is not making a determination about the benefits of, or need for, barn improvement, or even whether the general trends in barn improvement are a good idea or a bad idea. Rather, the differential determination is made on the expected actual market price for tobacco produced in the un-improved barns, taking into account the assessment of that price being made by the producer association itself. It is realized, however, that this determination may involve difficulty for some farmers who do not, or can not, make the improvements to their barns despite the incentives being offered in the industry to make that change. For that reason, comment on this proposal is requested. While all comments are welcome and solicited, respondents should, in particular, address the question of whether tobacco in un-improved barns will, in fact, have a market value for the upcoming crop year. It bears emphasizing that irrespective of the outcome of the proposal set out in this notice, tobacco produced in direct-heated barns will still be, at least technically, eligible for price support in that the tobacco will meet the minimum requirement that tobacco must meet to generate a price support loan as set out in part 1464. However, of course, this will not be of much value to the farmer, in terms of loan access since the loan value assigned the tobacco would be zero, or, perhaps, close to zero Because this is strictly a price determination, it does not appear that any change to program regulations, such as the regulation at 7 CFR 1464.8 dealing with tobacco eligibility standards, needs to be made

on an emergency basis to make the change set forth in this notice. Likewise, whether or not the differential proposal is adopted, this action will not prohibit tobacco from un-improved barns from being marketed to buyers which of itself would mitigate an error in determining the market value of the tobacco given that if the market value of the tobacco is greater then zero, producers will be free to market the tobacco at whatever price the market will be bear. Such marketings, if they do produce a return greater than zero, will at least indirectly benefit from the price support system because that system aids the market price of all tobacco by lifting the price for competing producers of the same kind of domestic tobacco.

In order to assure that there are no loan losses, the proposal will require certifications by producers of whether their tobacco has or has not been produced in improved barns. For these purposes, an improved barn would be any barn which has been retrofitted under the association's program or which otherwise have been built with, or improved to include, the technology that produces the market-preferred tobacco. In making this proposal, the Department wished to emphasize that it would be preferable if accommodations could be made within the industry to allow disadvantaged farmers extra time to complete barn improvements or to provide greater funding so that this change in market arrangements will produce less harm. To that end, the comments, which would include comment from the associations, and others interested in this issue, on whether there will be efforts made to provide for such assistance and on whether such considerations should be taken in consideration in setting the differentials. However, it should be understood that if the market value of the tobacco is indeed zero and despite that market value, no change was made in the differentials, this would mean not only that there would likely be loan losses but that because of those losses it would be necessary to increase tobacco assessments immediately (that is, for the 2001 crop) to cover such losses, as required by the 1949 Act. Such assessments could be considerable.

Following the receipt of the comments, the Secretary will take such action as may be warranted, taking into account the comments and any other information as may be relevant.

Proposed Change in Differentials for Flue-Cured Tobacco: Accordingly, it is proposed with respect to the 2001 and subsequent crops of flue-cured tobacco that the differentials for such tobacco provide (1) that the price support low value of tobacco produced in a barn without an acceptable indirect heat source for curing should be zero and (2) that producers should be required to certify in a manner acceptable to CCC whether their tobacco which is presented for a price support loan has been cured in a barn with an acceptable heat source. Such certifications may be tied to a program of barn improvement implemented by Stabilization as needed to assure a proper valuation of the tobacco for price support purposes.

Signed at Washington, DC, on December 7, 2000.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–31673 Filed 12–7–00; 4:54 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Horsethief

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for the Horsethief project, Sierra National Forest Fresno County, California.

DATES: The public is asked to submit any issues regarding potential effects of the proposed action or alternatives by January 15, 2001.

ADDRESSES: Send written comments to Ray Porter, District Ranger, Pineridge/King River Ranger District, P.O. Box 559, Prather, California 93651.

FOR FURTHER INFORMATION CONTACT: Kim Sorini-Wilson, Team Leader at (559) 855–5355, or e-mail ksorini@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background and Early Public Involvement

In 1995, the NEPA process for Horsethief began; knowing the main focus would be to re-introduce fire into the ecosystem with fuels reduction through timber harvest. A letter was sent to the public, requesting preliminary input in defining the characteristics of a healthy and viable ecosystem and to assist in planning projects that would achieve those characteristics. Two public field trips to Horsethief occurred in June 1995 and specialists began gathering information about existing condition. A conscious decision was made by the Forest Supervisor to defer planning efforts in order to better understand ecosystem management. An ecosystem management plan was prepared and signed in June of 1997. The Plan is titled Horsethief Ecosystem Analysis Plan. From this Ecosystem Analysis an Environmental Assessment titled Horsethief Environmental Assessment was completed and sent out for comments in December 1999; with the comments received and new scientific information it was decided to prepare an Environmental Impact Statement. No additional public meetings are anticipated.

Proposed Action

The proposed action is to reintroduce fire, improve forest health, manage stand structure and density for the survival and growth of conifer/oak seedlings and reestablish conifers while providing desired spotted owl habitat within Spotted Owl Habitat Area (SOHA #14, FR031).

The need is due to the high risk of stand replacing fire, the potential loss to the current investment (plantations) from fire and disease, and the potential for fires to exceed the boundaries of one watershed. A current fire risk analysis has shown this watershed to be at high risk for a stand replacing fire.

The need for forest health improvement is due to high tree densities are increasing tree stress, susceptibility to stand replacing fire, susceptibility of insect attack and disease; and plantations are at risk to increased infestations of mistletoe from infected mistletoe trees.

The need to improve the habitat conditions of SOHA #14 is due to lack of nesting habitat, excessive foraging habitat, vegetation conditions are not appropriate for increasing non-overlapping canopy cover, and previously harvested areas are not providing nesting or foraging habitat.

The proposed activities are consistent with the LRMP and the Horsethief Ecosystem Analysis Plan. The project prescriptions will be following California Spotted Owl (CASPO) guidelines (USDA 1993) and the recommended direction suggested in the Regional Forester's letter of May 1, 1998.

Preliminary Alternatives to the Proposed Action

To comply with NEPA, the Forest Service will evaluate alternatives to the proposed action within the EIS, including No Action and other alternatives responding to public comments. Each alternative will be rigorously explored and evaluated, or

rationale would be given for eliminating an alternative from detailed study. The range of alternatives to be considered would include, but not be limited to:

1. Fuels reduction and forest health—Fire is reintroduced through (1) thinning to prepare for burning; (2) the creation of DFPZs to assist in burning and to maintain fires to one watershed; (3) underburning conifer stands; (4) patch burning chaparral stands. Forest health is achieved through thinning and by removing mistletoe infested trees to reduce the risk of plantation loss from disease. The SOHA will not be entered under this alternative.

2. Fuels reduction, forest health and SOHA enhancement—Under this alternative all the activities listed above would occur and in SOHA #14 desired spotted owl habitat is created by (1) increasing canopy cover through conifer regeneration; and (2) maintaining potential nest trees. Stand structures within SOHA #14 are managed to provide desired spotted owl habitat while providing for the reintroduction of fire.

3. Fuels reduction, forest health and SOHA enhancement activities are conducted while maintaining or enhancing landscape level connectivity and stand level structure (denning, resting and foraging habitat) for the fisher.

The public will be invited to participate in the scoping process, and review of the draft environmental impact statement (DEIS). Comments from the public and other agencies will be used in preparation of the DEIS. The draft environmental impact statement is expected to be available for public review and comment in March 2001 and a final environmental impact statement in June 2001. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental state may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 409 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 5, 2000.

James L. Boynton,

Forest Supervisor.

[FR Doc. 00–31535 Filed 12–11–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1132]

Grant of Authority for Subzone Status; Coastal Fuels Marketing, Inc. (Petroleum Products Storage Facility), Port Everglades, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port Everglades Department of Broward County, Florida, grantee of FTZ 25, for authority to establish special-purpose subzone status at the petroleum products storage facility of Coastal Fuels Marketing, Inc. (Coastal) in Port Everglades, Florida, was filed by the Board on March 15, 2000, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 9–2000, 65 FR 15304, 3/22/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 25C) at the petroleum products storage facility of Coastal Fuels Marketing Inc., in Port Everglades, Florida, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–31495 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 65–2000]

Foreign-Trade Zone 27—Boston, Massachusetts; Application for Subzone, AstraZeneca LP (Pharmaceutical Products), Westborough, MA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority, grantee of FTZ 27, requesting special-purpose subzone status for the pharmaceutical manufacturing plant of AstraZeneca LP in Westborough, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 28, 2000.

AstraZeneca LP is a subsidiary of AstraZeneca PLC, a global prescription pharmaceutical manufacturer, formed in 1999 by a merger between Zeneca Group PLC (U.K.) and Astra AB (Sweden).

The Westborough plant (532,543 sq. ft./13 bldgs. on 83.3 acres) is located at 50 and 53 Otis Street, Westborough, Massachusetts. The facility (650 employees) produces finished pharmaceutical products and their intermediates, including XYLOCAINE®, POLOCAINE®, NAROPIN®, SENSORCAINE® anesthetics, and PULMICORT RESPULES®, for the treatment of asthma. Foreign-sourced materials will account for, on average, 70 percent of material value, and include items from the following general categories: Gums, starches, waxes, vegetable extracts, mineral oils, chemically pure sugars, empty capsules, protein concentrates, prepared animal feed, mineral products, inorganic acids, chlorides, clorates, sulfites, sulfates, phosphates, cyanides, silicates, radioactive chemicals, rare-earth metal compounds, hydroxides, hydrazine and hydroxylamine, chlorides, natural magnesium phosphates and carbonates, cyclic and acyclic hydrocarbons, alcohols, phenols and peroxides, esters, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, insecticides, rodenticides, fungicides and herbicides, fertilizers, vitamins, hormones, antibiotics, enzymes, essential oils, albumins, gelatins, activated carbon, residual lyes, acrylic polymers, color lakes, soaps and detergents, protein concentrates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

Zone procedures would exempt AstraZeneca from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 20.0 percent). Although at the outset, 100 percent of the production of ZD–0473, a developmental drug for the treatment of cancer, will be exported, it is expected that future zone savings would primarily involve choosing the finished product duty rate on ZD–0473, (HTSUS 3004.90.9015—duty-free), rather than the rate for a foreign-sourced active ingredient (HTSUS 2843.90.0000—3.7%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 10, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 25, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 164 Northern Avenue, World Trade Center, Suite 307, Boston, Massachusetts 02210.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 30, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31492 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 66–2000]

Foreign-Trade Zone 199—Texas City, Texas; Application for Subzone, ISP Technologies Inc. (Chemical Plant), Texas City, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Texas City Foreign-Trade Zone Corporation, grantee of FTZ 199, requesting special-purpose subzone status for the chemical plant facilities of ISP Technologies Inc., located in Texas City, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 28, 2000.

The facility is located at 4501 Attwater Avenue, Texas City, Texas. The application is requesting the use of zone procedures only for the portion of the facility that processes butanediol (B1D) into butyrolactone (BLO). This portion of the facility (2.2 acres, 170 employees) has the capacity to produce 140,000 pounds per day of BLO (HTS 2932.29.50 and 3824.90.47; duty rate 3.7%). All of the B1D is sourced from abroad (HTS 2905.39.10; duty rate 7.9%).

FTZ procedures would exempt ISP from Customs duty payments on the foreign components used in export production. Some 35 percent of the BLO produced from the imported B1D in 1999 was exported. On its domestic sales, ISP would be able to choose the duty rates during Customs entry procedures that apply to BLO (3.7%) for the foreign input noted above. The request indicates that the savings from FTZ procedures would help improve

the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 12, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 25, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 500 Dallas, Suite 1160, Houston, TX 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 30, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31493 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 67–2000]

Foreign-Trade Zone 115—Beaumont, Texas, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 115, requesting authority to expand its zone to include a petroleum terminal in Nederland (Jefferson County), Texas, within the U.S. Customs Service consolidated port of Port Arthur and Sabine. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 29, 2000.

FTZ 115 was approved on March 20, 1985 (Board Order 296, 50 FR 13261, 4/3/85). The zone project currently consists of seven sites (244 acres) in Orange and Jefferson Counties.

The applicant is now requesting authority to expand the general-purpose zone to include Proposed Site 8 (952 acres)—at the Sun Pipe Line Company (Sun PLC) crude oil petroleum terminal located in Nederland, Texas. The site includes all of the facilities of Sun PLC's Nederland Terminal, including the buildings, marine berths, storage tanks, pipelines, manifolds, pumps, valves, filters, meters, etc. The terminal includes an 802-acre marine facility that provides storage for crude oil and certain refined petroleum products. The terminal also includes a 150-acre tank farm that provides for storage of crude oil. Several of the storage tanks at the proposed zone site already are covered by two existing FTZ subzone grants (Mobil Oil Corporation (FTZ–115B) and Fina Oil & Chemical Company (FTZ–116–B)), and those tanks are excluded from this application. Sun PLC, the owner and anticipated operator of the proposed site, is a wholly-owned subsidiary of Sunoco, Inc. The facilities will be primarily used to store and distribute crude oil for Sunoco affiliates, but the facilities will also be available for use by other petroleum companies that lease tanks from Sun PLC. Sun PLC (or Sunoco) will be the operator of the site.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 12, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 26, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port of Beaumont, 1225 Main Street, Beaumont, Texas 77701, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 30, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31494 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from two respondents, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on circular welded non-alloy steel pipe (P&T) from Mexico. We are rescinding the review with respect to one of the respondents, Hylsa S.A. de C.V. (Hylsa). The review covers one manufacturer and exporter of the subject merchandise, Tuberia Nacional S.A. de C.V. (TUNA). The period of review (POR) is November 1, 1998, through October 31, 1999. We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: John Drury or Nancy Decker, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–0195 or (202) 482–0196, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1999).

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube

from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1998/99 review period on November 16, 1999 (64 FR 62167). Respondents TUNA and Hylsa, as well as petitioners, requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. We initiated this review on December 21, 1999. See 64 FR 72644 (December 21, 1998).

The Department received timely requests for withdrawal from the administrative review from the respondent Hylsa on March 15, 2000. On March 22, 2000, petitioners also withdrew their request for a review of Hylsa. In accordance with 19 CFR 351.213(d)(1), the Department is now terminating this review for respondent Hylsa because both petitioners and respondent have withdrawn their requests for review and no other interested parties have requested a review.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 11, 2000, the Department published a notice of extension of the time limit for the preliminary results in this case to November 29, 2000. See Extension of Time Limit: Circular Welded Non-Alloy Pipe From Mexico; Antidumping Administrative Review, 65 FR 49223 (August 11, 2000).

Period of Review

The review covers the period November 1, 1998 through October 31, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered each circular welded non-alloy steel pipe and tube product produced by the respondent, covered by the descriptions in the ''Scope of the Review'' section of this notice, supra, and sold in the home market during the POR, to be a foreign like product for purposes of determining appropriate product comparisons to U.S. sales of circular welded non-alloy steel pipe and tube. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's August 25, 2000, supplemental questionnaire, or to constructed value (CV).

Verification

As provided in section 782(i) of the Act, we verified information provided by TUNA (sales and cost) using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of the relevant sales and financial records.

Our verification results are outlined in the public versions of the verification reports. See Sales Verification Report dated November 29, 2000 and Cost Verification Report dated November 29, 2000.

Based on our findings at verification, we made changes to TUNA's reported general and administrative expenses, direct materials costs, and fixed overhead costs.

Normal Value Comparisons

To determine whether sales of circular welded non-alloy steel pipe from Mexico to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

We have used the date of invoice as the date of sale for all home market and U.S. sales made by TUNA during the POR.

Export Price and Constructed Export Price

We analyzed sales made to the United States, and determined that there were both EP and CEP sales in the United States during the POR. For certain sales to the United States, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by TUNA's U. S. affiliate (Acerotex) after having been imported into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

We determined that the remaining sales were EP sales based on the fact that TUNA sold the subject merchandise directly to the unaffiliated U.S. customer prior to importation, and CEP treatment was not otherwise indicated. We calculated EP in accordance with

section 772(a) of the Act. We based EP on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling and U.S. customs duties.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403 and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's-length. See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 62 FR 60472 (November 10, 1997); 62 FR 27295, 27355–56 (May 19, 1997). We included those sales that passed the arm's-length test in our analysis (see 19 CFR 351.403; 62 FR at 27355–56).

Where such sales did not pass the arm's length test, we used sales from affiliated resellers to the first unaffiliated customer. Additionally, we used sales from TUNA, Lamina y Placa Monterrey and Lamina y Placa Commercial which were made directly to unaffiliated customers. We preliminarily determine that TUNA, Lamina y Placa Monterrey and Lamina y Placa Commercial are all producers of the subject merchandise, as defined by section 771(28) of the Act, and that all three should be collapsed into a single entity for purposes of calculating normal value. See 19 CFR 351.401(f).

The Department collapses the operations of producers into a single entity when: (1) The producers are affiliated, (2) the producers have production facilities which would not require substantial retooling for producing similar or identical products, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the Department may consider: (1) The level of common ownership, (2) overlapping managerial employees or board members of the affiliated firms, and (3) whether the operations of the affiliated firms are intertwined. Based on the totality of the circumstances, the Department collapses affiliated producers and treats them as a single entity when these criteria are met. See Stainless Steel Wire Rod from Sweden, Final Determination of Sales at Less Than Fair Value, 63 FR 40452–53 (July 29, 1998).

In this instance, all three producers are in the same corporate group, the Villacero group, which is family owned. The facility of the TUNA entity for producing merchandise is used by all three producers. The merchandise produced by all three producers also is identical. The managerial employees and board members which control the Lamina y Placa companies also control TUNA. Finally, the operations of all three producers are not merely intertwined, but are conducted at the same facility in terms of production of subject merchandise. Based on the facts of the case, we are collapsing all three producers into a single entity for the purpose of this review in accordance with the Department's regulations. See TUNA Analysis Memorandum, dated November 29, 2000.

Where appropriate, in accordance with section 773(a)(6)(A) of the Act, we deducted credit expenses, warranties, advertising, insurance, packing, and certain discounts.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

As the Department explained in Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review (Cement from Mexico), 62 FR 17156 (April 9, 1997), for both EP and CEP the relevant transaction for the LOT analysis is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged by the exporter to the importer if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an unaffiliated U.S. customer the expenses referenced in section 772(d) of the Act and the profit allocated to these expenses. These expenses represent activities undertaken by the affiliated importer in making the sale to the unaffiliated customers. Because the expenses deducted under section 772(d) of the Act are incurred for selling activities in the United States, the deduction of these expenses may yield a different LOT for the CEP than for the later resale (which we use for the starting price). Movement charges, duties, and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer, and we do not remove them to obtain the price on which the CEP LOT is based.

To determine whether some or all home market sales are at a different LOT than U.S. sales, we examined the stages of marketing and the selling functions in both markets. An analysis of the selling functions substantiates or invalidates the claimed LOTs.

Our analysis of the data submitted by TUNA indicates that sales to the United States were made through two channels of distribution, and sales in the home

market were through multiple channels of distribution. Furthermore, there were differences in selling functions between certain types of customers in both markets, depending upon the channel of distribution. Sales in the home market to unaffiliated parties were to end users and distributors. Conversely, all sales in the United States were to distributors.

An examination of the selling functions in both markets indicates that TUNA performs a ''core'' of selling functions in the home market for all customers. These functions include inventory maintenance, salesman visits to customers, and technical services. Depending upon the channel of distribution, TUNA also performs additional selling functions for certain customers in the home market. TUNA provides certain selling functions in the form of specialized services to one channel of distribution, such as engineering advice and custom designed products, which are not provided to any other home market customers. In a separate channel of distribution, TUNA performs additional selling functions, related principally to affiliated resellers, which allow the resellers to perform selling functions for their unaffiliated customers. The selling functions provided by TUNA in this channel of trade, such as excess inventory return and personnel training, are unique.

Based on our analysis, we preliminarily determine that there are three levels of trade in the home market. Those sales receiving certain selling functions in the form of specialized services constitute one level of trade. Downstream sales through affiliates receive a unique set of selling functions and thus constitute a separate level of trade. All other sales in the home market constitute a third level of trade, in which only the ''core'' selling functions, described above, are performed.

In the United States, we preliminarily determine that there are two separate levels of trade. These correspond to EP and CEP sales, respectively. For CEP sales, we found minimal selling functions (such as inventory maintenance) performed by TUNA for its U.S. affiliate. Therefore, we preliminarily determine that the CEP is at a different LOT from any of the HM LOTs. For EP sales, we found that TUNA performs certain selling functions consistent with the ''core'' functions performed for sales in the home market. Therefore, the selling functions are the same, and we preliminarily determine that EP sales in the United States are at the same level of trade as those sales in the home market which do not receive specialized services, or services provided on downstream sales (*i.e.*, the third level of trade in the home market).

Section 773(a)(7)(A) of the Act directs us to make an adjustment for differences in LOT where such differences affect price comparability. For CEP, because there are insufficient data to perform an analysis of the effect on price comparability, and each home market LOT is more advanced than the CEP LOT, the Department must make a CEP offset. Therefore, regarding those sales to the United States which are classified as CEP sales, in accordance with section 773(a)(7)(B) of the Act, a CEP offset is warranted.

As we have determined that TUNA's home market sales at the third LOT are at the same level of trade as the EP sales in the United States, we have made no LOT adjustment when TUNA's EP sales matched sales at this LOT. See TUNA Analysis Memorandum, dated November 29, 2000.

Cost-of-Production Analysis

Because the Department disregarded sales below cost for TUNA in the comparison market during the last completed segment of the proceeding, we initiated a cost of production analysis in accordance with section 773(b) of the Act. We conducted the COP analysis as described below.

A. Calculation of COP

We calculated the COP based on the sum of TUNA's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling, general, and administrative expenses (''SG&A''), and packing costs in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs for TUNA, with changes. See TUNA Analysis Memorandum, dated November 29, 2000.

B. Test of Home-Market Prices

We used the respondents' weighted-average COPs for the period November 1, 1999, through October 31, 2000. We compared the weighted-average COP figures to home-market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices, less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

In accordance with section 773(b)(2)(C), where less than 20 percent of TUNA's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of TUNA's sales during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Furthermore, because we compared prices to POR average COPs, we determined that below-cost prices do not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded such below-cost sales of TUNA. Where all contemporaneous sales of comparison products were disregarded, we calculated NV based on CV.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of TUNA's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses as reported in the U.S. sales database, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we

determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Producer/manufacturer/exporter	Weighted-average margin (percent)
TUNA	2.57

The Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed (19 CFR 351.224). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of circular welded-non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent, and therefore, de minimis within the meaning of 19 CFR 351.106(c), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 36.62%, the ''all other'' rate from the original investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31491 Filed 12–11–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part

SUMMARY: In accordance with 19 CFR 351.216(b), Taiho Corporation of America (''Taiho America'') requested a changed circumstances review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan with respect to the carbon steel flat product as described below. Domestic producers of the like product have expressed no interest in continuation of the order with respect to this particular carbon steel flat product. In response to Taiho America's request, the Department of Commerce (''the Department'') is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182, (202) 482–3818, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On October 23, 2000, Taiho America requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Taiho America requested that the Department revoke the order with respect to imports meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to

3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. Taiho America is an importer of the product in question.

Scope of Review

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. Also excluded from this review are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. Also excluded from this review are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. Also excluded from this review are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials. Also excluded from this review are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. Also excluded from this review are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the {relief provided by the} order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; Ispat Inland Steel; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a unit of USX Corporation (''domestic producers''), of no further interest in continuing the order with respect to certain corrosion-resistant carbon steel flat products meeting the

following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys (*see* domestic producers' November 16, 2000 letter to the Department), we are initiating this changed circumstances administrative review. Furthermore, because petitioners have expressed a lack of interest, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty orders with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) A statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments. This notice is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31633 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is amending the final results of the administrative review of the antidumping duty order on certain cut-to-length (CTL) carbon steel plate from Mexico to correct certain ministerial errors. *See Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 8338 (February 18, 2000), *as amended,* 65 FR 65830 (November 2, 2000). These corrections are in accordance with section 751(h) of the Tariff Act of 1930, as amended (the Tariff Act) and 19 CFR 351.224 of the Department's regulations. The period covered by these amended final results of review is August 1, 1997 through July 31, 1998.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5222 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 CFR part 351 (1998).

Amended Final Results

On February 18, 2000, the Department published in the **Federal Register** the final results of the 1997–1998 administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Mexico (65 FR 8338). This review covered one producer of the subject merchandise, Altos Hornos de Mexico S.A. de C.V. (AHMSA) and the period August 1, 1997 through July 31, 1998. Following timely allegations by both AHMSA and petitioners,[1] the Department subsequently amended the final results of this administrative review. *See Notice of Amended Final Results of Antidumping Duty Administrative Review,* 65 FR 65830 (November 2, 2000). The amended final results yielded a weighted average margin for AHMSA of 21.75 percent.

On October 31, 2000, AHMSA submitted allegations of an additional ministerial error. AHMSA alleged that the Department incorrectly calculated the costs of certain raw materials supplied by affiliated parties by applying an incorrect adjustment factor to these material costs. This error had the effect of double counting the profit realized by the affiliates on these transactions. According to AHMSA, the correction of this error would cause

[1] Petitioners are Bethlehem Steel Corporation, Geneva Steel, Gulf States Steel, Inc. of Alabama, Inland Steel Industries, Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group (a unit of USX Corporation).

certain home market sales to pass the cost test; therefore, AHMSA urged the Department to amend its model match computer programming language in order to permit these now above-cost home market sales to be matched to U.S. sales of identical merchandise.

We agree with AHMSA's allegation concerning our recalculation of AHMSA's direct material costs, and have made the suggested programming changes to permit matches of U.S. sales to above-cost sales of identical merchandise in the home market. Furthermore, in preparing these amended final results, we found and rectified an additional error in the treatment of indirect selling expenses in our cost-of-production test. *See* Memorandum to the File, ''Analysis of Data Submitted by Altos Hornos de Mexico, S.A. (AHMSA) for the Second Amended Final Results of Review of Cut-to-Length Carbon Steel Plate from Mexico (A–201–809),'' dated November 21, 2000. After the two mathematical corrections, however, all home market sales of model number ''1,'' the model identical to the U.S. model, continued to fail the cost test. As a result, for these amended final results, we continued to compare the U.S. model to the most similar home market model.

As a result of our analysis of AHMSA's allegations, we are again amending our final results of review to correct the error in calculating affiliated party profit identified by AHMSA, as well as to rectify the error involving indirect selling expenses we uncovered during our analysis, in accordance with 19 CFR 351.224(e). The amended weighted average dumping margin for AHMSA for the period August 1, 1997 through July 31, 1998 is 25.02 percent.

Accordingly, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. Because there is only one importer of the subject merchandise, we have calculated an importer specific duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales. Furthermore, the following deposit requirements shall be effective upon publication of this notice of amended final results of review for all shipments of certain cut-to-length carbon steel plate from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 49.25 percent, the ''All Others'' rate in the less-than-fair-value investigation. *See Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From Mexico,* 58 FR 44165 (August 19, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.224.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31496 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of elemental sulphur from Canada.

SUMMARY: On September 8, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review on the antidumping duty order on elemental sulphur from Canada. This review covers imports of subject merchandise from Husky Oil Limited (''Husky''), a producer, and Petrosul International (''Petrosul''), a reseller. The period of review (''POR'') for Husky and Petrosul is from December 1, 1998 through December 31, 1999. The POR for all other entries is December 1, 1998 through November 30, 1999. We gave interested parties an opportunity to comment on our preliminary results. No interested parties have filed case briefs or rebuttal briefs on the preliminary results and no request for a hearing has been received by the Department. Therefore, we have not changed the results from those presented in the preliminary results of review and we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries for Petrosul and Husky.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182 or (202) 482-3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1999).

Background

The antidumping dumping duty order for elemental sulphur from Canada was revoked, pursuant to the sunset procedures established by statute, effective January 1, 2000. *See Revocation of Antidumping Finding: Elemental Sulphur From Canada,* 64 FR 40553 (July 27, 1999). However, we are conducting this review to cover sales of the subject merchandise made in the United States by Husky and Petrosul during the 13-month period from December 1, 1998, until the effective date of the revocation.

On September 8, 2000, the Department published in the **Federal Register** its preliminary results of the antidumping duty order on elemental sulphur from Canada (65 FR 54488) (''Preliminary Results''). As noted above, the Department did not receive comments from interested parties.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (''HTS'') subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the Department's written description of the scope of this order remains dispositive.

Period of Review

The POR for Husky and Petrosul is from December 1, 1998 through December 31, 1999. *See* April 11, 2000 letters to Husky and Petrosul, in which the Department extended the POR to include December 1999. The POR for all other entries is December 1, 1998 through November 30, 1999.

Adverse Facts Available

As discussed in the Preliminary Results, we preliminarily determined that the application of total adverse facts available with respect to Petrosul was appropriate. No parties have commented on this determination, and no new facts have been submitted which would cause the Department to revisit this decision. Therefore, for the reasons set out in the Preliminary Results, 65 FR 54489–90, we have continued to apply total adverse facts available to Petrosul for the purposes of this final results notice.

Final Results of Review

As a result of our review, we determine that the following weighted-average dumping margins exist for the period December 1, 1998 through December 31, 1999:

Manufacturer/exporter/reseller	Margin (percent)
Husky Oil Limited	0.55
Petrosul International, Ltd	40.38

Assessment

The Department will assess antidumping duties on all Petrosul entries at the same rate as the dumping margin (*i.e.*, 40.38 percent) since the margin is not a current calculated rate for the respondent, but a rate based upon total adverse facts available pursuant to section 776(b) of the Act. We will assess importer-specific antidumping duties on all appropriate Husky entries. Also, the Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit

Because the antidumping duty order on elemental sulphur from Canada has been revoked, effective January 1, 2000, no cash deposits are required for entries of elemental sulphur from Canada for entries on or after January 1, 2000. *See Revocation of Antidumping Finding: Elemental Sulphur From Canada,* 64 FR 40553 (July 27, 1999).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31632 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–814, A–570–865, A–533–820, A–560–812, A–834–806, A–421–807, A–485–806, A–791–809, A–583–835, A–549–817, A–823–811]

Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Charles Riggle at (202) 482–3818 and (202) 482–0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petitions

On November 13, 2000, the Department of Commerce (the Department) received petitions filed in proper form by the following parties: Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and the Independent Steelworkers Union (collectively the petitioners). [1] The United Steelworkers of America notified the Department that it also is a petitioning party in these investigations on November 16, 2000. The Department received from the petitioners information supplementing

[1] Weirton Steel Corporation is not a petitioner in the investigation involving the Netherlands.

the petitions throughout the 20-day initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain hot-rolled carbon steel flat products (hereafter referred to as hot-rolled steel) from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China (the PRC), Romania, South Africa, Taiwan, Thailand, and Ukraine are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see* the *Determination of Industry Support for the Petitions* section below).

Scope of Investigations

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by December 26, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to

determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, ''the article subject to investigation'' is substantially similar to the scope of the Department's investigations involving hot-rolled carbon steel products initiated in 1998. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation,* 63 FR 56607 (October 22, 1998). The only differences are as follows: (1) A 2.25 percent silicon maximum content level (as opposed to 1.50 percent in the 1998 case); (2) the omission of maximum content levels for boron and titanium; and (3) the itemization of two additional examples of products specifically excluded from the scope, *i.e.*, all products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507), and non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS. The Department has reviewed reasonably available information to determine whether the products within the scope of the investigations constitute one or more than one domestic like product.

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel*, a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA, IF, and motor lamination steels as falling within categories of plain carbon sheet steels (*see* chapters 44, 45 and 52). Also, *Carbon and Alloy Steels,* published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). Carbon and Alloy Steels also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.,* pages 159 and 161).

We noted that, in 1998 hot-rolled steel investigations, we discussed these issues with representatives of the ITC and the International Trade Administration's (ITA's) Office of Trade Development. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the agency representatives cited reasons why the products in question might be treated as distinct from hot-rolled carbon steels. In addition to the research discussed above, the Department determined in the 1998 hot-rolled steel investigations that, with respect to certain steel products, such as high-strength low-alloy steel, industry sources indicated that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications. *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation: Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998* (which is on file and publically available in the Central Records Unit (CRU) of the Main Commerce Department building). We are unaware of any factual differences between the present case and the initiation of the 1998 hot-rolled steel investigations. Thus, based on our analysis of the information presented to the Department above and the information obtained and reviewed independently by the Department, we have determined that there is a single domestic like product which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, Section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied upon not only the petition and amendments thereto, but also upon ''other information'' it obtained through research and which is attached to the Initiation Checklist (*See Import Administration AD Investigation Initiation Checklist (Initiation Checklist*), Attachment Re: Industry Support, December 4, 2000). Based on information from these sources, the Department determined, pursuant to Section 732(c)(4)(D), that there is support for the petition as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition

[2] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

account for at least 25 percent of the total production of the domestic like product, and the requirements of Section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of Section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the *Initiation Checklist.*

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist.* Where the petitioners obtained data from foreign market research, we spoke to the researcher to establish that person's credentials and to confirm the validity of the information being provided. *See* Memorandum to the File, *Telephone Conversation with Source of Market Research used in Antidumping Petition to Support Certain Factual Information,* dated December 4, 2000. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate. The period of investigation (POI) for market economy countries is October 1, 1999, through September 30, 2000, while the POI for non-market economies (NME) is April 1, 2000, through September 30, 2000.

Regarding the investigations involving NME, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC,* 59 FR 22585 (May 2, 1994). In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters.

Lastly, in the petitioners' calculation of the estimated margins in the cases involving NME countries (except the PRC) and certain market economy countries, the petitioners, in submissions dated November 22, 2000, based export prices on import statistics covering certain months and ports of entry. For initiation purposes, we have recalculated the estimated margins for these countries using POI-wide and nation-wide averages of the appropriate import values. For the remaining market economy countries, we based export price (EP) on price quotes obtained by the petitioners from foreign producers to unaffiliated U.S. purchasers.

We note that, on December 4, 2000, the petitioners calculated EP based on import statistics covering the entire POI (*i.e.,* 12 months for market economies, 6 months for NME countries) through the port of New Orleans, which the petitioners note ranks first among all U.S. ports for imports of hot-rolled steel from the countries against which the petitions were filed. The petitioners maintain that such a methodology is appropriate because the ''precipitous decline in import prices of hot-rolled steel which has continued since May of this year is not yet fully reflected in the IM–145 Census data, due to the time lag in reporting of this data.'' The petitioners note that this is because, for sales which are made pursuant to a contract, a significant number of months often transpire between agreement on price and entry into the United States. To resolve these timing differences, the petitioners suggest that the use of New Orleans import statistics is more appropriate, to the extent that imports through this port include substantial volumes of hot-rolled steel sold on a ''spot'' basis. Specifically, the petitioners note that AUVs based primarily on ''spot'' sales would likely be more sensitive to and, therefore, likely more reflective of, recent price declines in the market than would be the case with national averages. The margins calculated using this methodology are as follows: Indonesia 80.57 percent, Kazakhstan 166.93 to 168.89 percent, the Netherlands 28.10 percent, Romania 77.23 to 100.46 percent, South Africa 6.35 percent, Taiwan 16.06 to 50.48 percent, Thailand 18.53 to 19.85 percent, and Ukraine 85.20 to 86.68 percent.

Because the Department received these recalculations from the petitioners at a very late date, we did not have adequate time to analyze these arguments. However, since the use of POI-wide, country-wide import statistics to calculate estimated margins is sufficient for purposes of initiation, it is not necessary to address those arguments at this time. To the extent necessary, we will consider the appropriateness of the petitioners' alternative methodology during the course of this proceeding. However, we have initiated these investigations based on the POI-wide, country-wide import statistics.

Argentina

Export Price

The petitioners based EP on price quotes from an Argentine steel producer to an unaffiliated U.S. purchaser for different grades and sizes of subject merchandise, and calculated a net U.S. price by deducting international freight and duties.

Normal Value

With respect to normal value (NV), the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Argentina using publicly available data. To calculate depreciation and SG&A expenses the petitioners relied upon amounts reported in an Argentine steel producer's unconsolidated 2000 financial statements. For interest expense, the petitioners used the Argentine steel producer's consolidated 2000 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at

prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Argentina on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute Argentine home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in an Argentine steel producer's unconsolidated 2000 financial statements.

Based upon the comparison of EP to CV, the petitioners calculated estimated dumping margins ranging from 36.61 to 44.59 percent.

India

Export Price

The petitioners based EP on a price quote from the Steel Authority of India, Ltd., (SAIL) to an unaffiliated U.S. purchaser for different grades and sizes of hot-rolled steel, and calculated a net U.S. price by deducting a foreign trading company's mark-up, foreign inland freight, international freight, U.S. port charges, and custom duties. Although, the submitted price does not specify whether it was based upon FOB or CIF prices, the Department notes that the adjustments to price are those incurred on shipments irrespective of the terms of sale.

Normal Value

With respect to NV, the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was FOB mill and did not make any deductions for movement expenses from this price. Because the home market sales are made on a 30-day credit basis, the petitioners made a deduction for imputed credit expense.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP refers to the total cost of producing the foreign-like product which includes COM, SG&A expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and India using publicly available data. The petitioners noted that the Indian manufacturers produce a variety of steel products besides hot-rolled steel. Under these circumstances, the petitioners submitted the best estimate of depreciation cost by utilizing the product-specific depreciation based on the U.S. producer's experience. To calculate SG&A and financing expenses, we relied upon amounts reported in an Indian steel producers unconsolidated 2000 financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in India on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute Indian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. The petitioners calculated a profit amount from the unconsolidated 2000 financial statements for an Indian steel producer.

Based upon the comparison of EP to CV, the petitioners calculated estimated dumping margins ranging from 11.12 to 51.99 percent.

Indonesia

Export Price

The petitioners identified PT Krakatau Steel as the only producer of subject merchandise in Indonesia. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the average per-unit customs import values (AUV) for the two ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Indonesia during the period November 1999 through August 2000. For each of the two HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Indonesia using POI-wide and nation-wide averages of the appropriate import values. The petitioners presumed that the customs values used to calculate the AUV for each HTSUS category are identical to the free alongside ship (FAS) export value of the subject merchandise being shipped by PT Krakatau Steel. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis.*

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotations were ex-mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Indonesia. To calculate SG&A expenses and interest expense, the petitioners relied upon amounts reported in an Indonesian steel producer's 1999 financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP,

within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Indonesia on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses and interest expense figures used to compute Indonesian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. Profit was calculated based on an Indonesian steel producer's 1999 financial statements.

Based upon the comparison of EP to CV, we recalculated an estimated weighted-average dumping margin of 59.25 percent.

Kazakhstan

Export Price

The petitioners identified Ispat Karmet JSC (Ispat) as the only producer of subject merchandise in Kazakhstan. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for the three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Kazakhstan which entered through a specific customs port during a specific month of the POI. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of estimated dumping margins, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Kazakhstan using POI-wide and nation-wide averages of the appropriate import values. We note that customs import value as defined by *Technical Documentation for US Exports and Imports of Merchandise on CD-ROM* excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight. In order to calculate foreign inland freight, the petitioners first determined the distance by rail between Temirtau and Novorossiysk, the port which the petitioners determined to be the most appropriate port of embarkation for inter-continental shipment of goods originating in Kazakhstan, and then applied an Indonesian rail rate as a surrogate.

Normal Value

The petitioners allege that Kazakhstan is an NME country, and in all previous investigations, the Department has determined that Kazakhstan is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys from the Republic of Kazakhstan,* 62 FR 2648, 2649 (January 17, 1997). Kazakhstan will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Kazakhstan's status as an NME remains in effect, the petitioners determined the dumping margin using an FOP analysis.

For NV, the petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. hot-rolled steel producer, adjusted for known differences in production efficiencies on the basis of available information. The petitioners assert that information regarding Ispat's consumption rates is not available, and have therefore assumed, for purposes of the petition, that producers in Kazakhstan use the same inputs in the same quantities as the petitioners use, except where a variance from the petitioners' cost model can be justified on the basis of available information. The petitioners argue that the use of the petitioners' factors is conservative because the U.S. steel industry is more efficient than the Kazakh steel industry. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

The petitioners assert that Indonesia is the most appropriate surrogate country for Kazakhstan, claiming that Indonesia is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to Kazakhstan in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of Indonesia as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from Indonesia. The materials were primarily valued based on Indonesian import values, as published in the UN *Trade Commodity Statistics.* However, for coal used in coke-making, the petitioners used an Indian import value based on their assertion that no Indonesian value was available. Labor was valued using the regression-based wage rate for Kazakhstan provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate for Indonesia published in a quarterly report of the OECD's International Energy Agency. For overhead, SG&A expenses and profit, the petitioners applied rates derived from the public annual report of an Indonesian producer of subject merchandise, PT Krakatau Steel. All surrogate values which fell outside the POI were adjusted for inflation based on the currency in which the source data were reported. The Indonesian consumer price index or the PPI, as published by the International Monetary Fund's *International Financial Statistics,* was used for these adjustments. Based on the information provided by the petitioners, we believe that their surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based upon a comparison of EP to CV, we recalculated estimated dumping margins ranging from 143.71 to 167.24 percent.

The Netherlands

Export Price

The petitioners identified the Corus Group as the only Dutch producer of subject merchandise. The petitioners were unable to obtain prices for specific sales or offers for sale for the subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for the ten-digit category of the HTSUS accounting for a significant percentage of in-scope imports from the Netherlands during the period November 1999 through August 2000. For the HTSUS category under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margins for the Netherlands using POI-wide and nation-wide averages of the appropriate import values. The petitioners presumed that the customs values used to calculate the AUV for the HTSUS category are equivalent to the FAS

export value of the merchandise being shipped by Dutch mills. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis.*

Normal Value

With respect to NV, the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel products that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, financial expense, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and the Netherlands using publicly available data. The petitioners' calculated SG&A expenses based on the financial statements of a Dutch equipment manufacturer, because the financial statements of the Dutch steel producer did not allow for the calculation of SG&A expenses. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in the Netherlands on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute the home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit which was based on the profit of a surrogate Dutch equipment manufacturer.

Based upon the comparison of EP to CV, we recalculated an estimated dumping margin of 19.36 percent.

The PRC

Export Price

The petitioners identified the following companies as possible producers and/or exporters of hot-rolled steel from the PRC: Anshan Iron & Steel (Group) Co. (Anshan), Shanghai Baosteel Group Corp., Anyang Iron and Steel Group, Wuhan Iron and Steel Group Co., Benxi Iron and Steel Group Co., and Laiwu Iron and Steel Group. The petitioners based EP on a price offering for the first sale of a range of hot-rolled products from Anshan to an unaffiliated U.S. purchaser. The petitioners calculated a net U.S. price by deducting foreign inland freight, international shipping charges, U.S. port charges, U.S. customs duties, and a trading company mark-up.

In order to calculate foreign inland freight expense, the petitioners first determined the distance by rail between Anshan and Dalian, the port from which Anshan-manufactured hot-rolled steel is exported. Since the PRC is an NME country (see the discussion of NV below), the petitioners then applied Indian rail rates as a surrogate. We relied on the petitioners' calculation of EP except with respect to their deduction for marine insurance charges (included in the international shipping charges figure). However, because the terms of sale (which are proprietary information) of the offer are exclusive of insurance charges, we do not find that it is appropriate to make a deduction for these charges. Therefore, we have added to U.S. price an amount for marine insurance charges, based on a marine insurance rate recently used in the preliminary determination of the antidumping investigation of steel wire rope from the PRC. *See Antidumping Investigation of Steel Wire Rope from the People's Republic of China: Factors of Production Valuation for the Preliminary Determination,* dated September 25, 2000, which is contained in the *Initiation Checklist.* For our recalculation of EP, *see* the *Initiation Checklist.*

Normal Value

The petitioners assert that the PRC is an NME country, and note that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000). The PRC will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners estimated the dumping margin using an NME analysis.

For NV, the petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. hot-rolled steel producer. The petitioners assert that information regarding Chinese producers' consumption rates is not available, and that the U.S. producer employs a production process which is similar to the production processes employed by the two largest producers of hot-rolled steel in the PRC. Thus, the petitioners have assumed, for purposes of the petition, that producers in the PRC use the same inputs in the same quantities as the petitioners use. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Materials, with the exception of tar, sulphate, petroleum coke, and granular slag, were valued based on Indian import values, as published in the *1998 and 1999 Monthly Statistics of Foreign Trade of India,* and inflated based on the Indian Wholesale Price Index. Because the Indian import values for tar and sulphate were claimed to be many times higher than the price paid by the U.S. producer, these inputs were valued based on Indian export data, as published by UN Import Statistics (1998), and inflated based on the U.S. Producer Price Index (PPI). Also, because India did not import petroleum coke during the period for which data are available, the petitioners valued petroleum coke using UN Import Statistics (1998), and inflated the value based on the U.S. PPI. Finally, the petitioners valued granular slag using a

U.S. price for iron slag, as reported by the U.S. Geological Survey. The Department previously used this value in the antidumping investigation of certain cold-rolled flat-rolled carbon-quality steel products from the PRC. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the People's Republic of China,* 65 FR 1117, 1126 (January 7, 2000). Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using *Energy Prices and Taxes, Second Quarter 2000,* published by the OECD International Energy Agency, and natural gas was valued using a current price for natural gas in India from the second quarter earnings statements of EOG Resources Inc., a large publicly-traded oil and gas company.

For overhead, depreciation, SG&A expenses, and profit, the petitioners applied rates derived from the financial statements of SAIL and TATA, India's two largest integrated producers of hot-rolled steel products. The petitioners calculated simple averages of the factory overhead expense ratio, depreciation expense ratio and SG&A expense ratio based on each company's 1999–2000 unconsolidated statements. Because SAIL did not earn a pre-tax profit, the petitioners based profit on net profit before taxes found in TATA's 1999–2000 income statement. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation.

Based upon comparisons of EP to CV, we recalculated estimated dumping margins ranging from 34.34 to 38.97 percent.

Romania

Export Price

The petitioners identified Sidex SA Galati and Gavazzi Steel SA as the principal Romanian producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Romania which entered through a specific customs port during a specific month of the period of POI. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Romania using POI-wide and nation-wide averages of the appropriate import values. We note that customs import value as defined by *Technical Documentation for US Exports and Imports of Merchandise on CD–ROM* excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight. In order to calculate foreign inland freight, the petitioners first determined the distance by rail between Galati and Constanta, the port which the petitioners determined to be the most appropriate port of embarkation for inter-continental shipment of goods originating in Romania, as a conservative estimate of the distance for both producers, and then applied to this distance an Indonesian rail rate as a surrogate.

Normal Value

The petitioners allege that Romania is an NME country, and in all previous investigations, the Department has determined that Romania is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania,* 65 FR 39125 (June 23, 2000). Romania will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Romania's status as an NME remains in effect, the petitioner determined the dumping margin using an FOP analysis.

Given that information regarding the respondents' consumption rates is not available, the petitioners calculated NV using the same methodology described above for Kazakhstan. Further, the petitioners used Indonesia as the surrogate country. We believe that Indonesia is an appropriate surrogate for purposes of initiating this case with respect to Romania for the same reasons as discussed above with respect to Kazakhstan. Lastly, the petitioners valued Romania's FOP with the same surrogate values as used with respect to Kazakhstan, with the only exception being that coal was valued with the cost of one of the petitioners because no appropriate Indonesian value was available.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 75.38 to 88.62 percent.

South Africa

Export Price

The petitioners identified Highveld Steel and Vanadium Corporation Limited, Saldanha Steel Limited, and Iscor Limited as the principal South African producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for a ten-digit category of the HTSUS accounting for a significant percentage of in-scope imports from South Africa during the period November 1999 through August 2000. For the HTSUS category under examination, the petitioners calculated the import AUV using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for South Africa using POI-wide and nation-wide averages of the appropriate import values. The petitioners presumed that the customs values used to calculate the AUV for the HTSUS category are identical to the FAS export value of the merchandise being shipped by South African mills. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above de minimis.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotations were ex-mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the

Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and South Africa. To calculate SG&A expenses, the petitioners relied upon amounts reported in a South African steel producer's unconsolidated financial statements for the fiscal year ending June 30, 2000. To determine financial expenses, the petitioners relied on the South African steel producer's consolidated financial statements for the fiscal year ending June 30, 2000. Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in South Africa on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute South African home market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. The petitioners calculated a profit amount based on the financial data of a South African processor and seller of steel products. However, we revised the profit amount to be included in CV by using a profit ratio based on the June 30, 2000, unconsolidated financial statements of the same South African steel producer used to compute the SG&A expenses.

Based upon the comparison of EP to CV, we recalculated an estimated dumping margin of 9.28 percent.

Taiwan

Export Price

The petitioners identified An Feng Steel Co., Ltd., China Steel Corporation, and Yieh Loong Enterprise Co., Ltd., as the principal Taiwanese producers of subject merchandise. The petitioners were unable to obtain prices for specific sales or offers for sale for subject merchandise in the United States. Therefore, in their initial submission, the petitioners based EP on the AUVs for three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Taiwan during the period September 1999 through August 2000. In their supplemental submission, the petitioners revised their methodology and based EP on import statistics covering a limited number of months and U.S. ports of entry. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In both their calculations of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margins for Taiwan using POI-wide and nation-wide averages of the appropriate import values. Petitioners presume that the customs values used to calculate the AUV for each HTSUS category reflect the actual transaction value of the merchandise being shipped by Taiwan's mills. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight and foreign brokerage and handling. These values were based upon China Steel Corporation's August 30, 1999, Section C questionnaire response in the investigation of certain cold-rolled flat-rolled carbon-quality steel products. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan,* 65 FR 1095 (January 7, 2000).

Normal Value

With respect to NV, the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to the products exported to the United States. The petitioners state that the home market price quotation was on an FOB-mill basis and, therefore, made no deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Taiwan using publicly available data. To calculate depreciation, SG&A expenses, and interest expense, the petitioners relied upon amounts reported in a Taiwanese steel producer's 1999 financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Taiwan on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute COP. Consistent with section 773(3)(2) of the Act, the petitioners also included in CV an amount for profit. For profit, the petitioners relied upon the amounts reported in a Taiwanese steel producer's 1999 audited financial statements.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 15.18 percent to 29.14 percent.

Thailand

Export Price

The petitioners identified Siam Strip Mill Public Co. Ltd., Saharviriya Steel Industries Public Co. Ltd., and Nakornthai Strip Mill Public Co. Ltd., as the principal Thai producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, in their initial submission, the petitioners based EP on the AUVs for two ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Taiwan during the period September 1999 through August 2000. In their supplemental submission, the petitioners revised their methodology and based EP on import statistics covering a limited number of months and U.S. ports of entry. For the HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import

statistics. In both their calculations of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margins for Thailand using POI-wide and nation-wide averages of the appropriate import values. Petitioners presume that the customs values used to calculate the AUV for each HTSUS category reflect the actual transaction value of the merchandise being shipped by Thailand's mills. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis.*

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to the products exported to the United States which serve as the basis for EP. The home market price employed in the petitioners' dumping analysis was the average of the range of Thailand's transaction prices. The petitioners state that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Thailand using publicly available data. We revised the petitioners' calculation of depreciation and SG&A expenses using ratios, provided by the petitioners, which were derived from amounts reported in a Thai steel producer's 1999 audited, unconsolidated financial statements. For interest expense, the petitioners used a Thai steel producer's 1999 audited consolidated financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide sales-below-cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Thailand on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute Thai home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. We revised the petitioners calculation of this profit amount using a profit ratio, provided by the petitioners, based on a Thai steel producer's 1999 audited unconsolidated financial statements.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 10.35 to 20.30 percent.

Ukraine

Export Price

The petitioners identified Dnepropetrovsk Comintern Steel Works, Ilyich Iron & Steel Works, Mariupol, Krivoi Rog State Mining (Krivorozhstal), and Zaporozhstal Iron & Steel Works as the principal Ukrainian producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Ukraine which entered through a specific customs port during a specific month of the period of POI. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Ukraine using POI-wide and nation-wide averages of the appropriate import values. We note that customs import value as defined by *Technical Documentation for US Exports and Imports of Merchandise on CD–ROM* excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis.*

Normal Value

The petitioners allege that Ukraine is an NME country, and in all previous investigations, the Department has determined that Ukraine is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine,* 62 FR 61754 (November 19, 1997). Ukraine will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Ukraine's status as an NME remains in effect, the petitioners determined the dumping margin using an FOP analysis.

Given that information regarding the Ukrainian mills' consumption rates is not available, the petitioners calculated NV using the same methodology described above for Kazakhstan. Further, the petitioners used Indonesia as the surrogate country. We believe that Indonesia is an appropriate surrogate for purposes of initiating this case with respect to Ukraine for the same reasons as discussed above with respect to Kazakhstan. Lastly, the petitioners valued the Ukrainian mills' FOP with the same surrogate values as those used with respect to Kazakhstan, with the only exception being that coke was valued with Indonesian import statistics, because public information indicated that Ilyich Iron and Steel Works does not possess coke batteries.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 89.13 to 89.49 percent.

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Argentina, India, Indonesia, the Netherlands, South Africa, Taiwan, and Thailand were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Session, at 833(1994). The SAA, at 833, states that ''Commerce will consider

allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products in the markets of Argentina, India, Indonesia, the Netherlands, South Africa, Taiwan, and Thailand were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of hot-rolled steel from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist* at Attachment II Re: Material Injury).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on hot-rolled steel, and the petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our conversation with the foreign market researcher who provided information concerning various aspects of the petitions, we have found that they meet the requirements of section 732 of the Act. *See Memorandum to the File, Telephone Conversation with Source of Market Research used in Antidumping Petition to Support Certain Factual Information,* dated December 4, 2000. Therefore, we are initiating antidumping duty investigations to determine whether imports of hot-rolled steel from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than December 28, 2000, whether there is a reasonable indication that imports of certain hot-rolled steel products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 4, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31635 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of changed circumstance antidumping duty review, and determination to revoke order in part.

EFFECTIVE DATE: December 12, 2000.

SUMMARY: On October 27, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of a changed circumstances antidumping duty review and preliminary results of review with intent to revoke, in part, the antidumping duty order on stainless steel sheet and strip in coils from Japan (65 FR 64424). We are now revoking this order, in part, with regard to the following product: nickel-clad stainless steel sheet and strip in coils from Japan, as described in the ''Scope'' section of this notice. This partial revocation is based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the importation or sale of this nickel clad stainless steel sheet and strip in coils from Japan, as so described.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments

made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April, 1999).

Background

On August 17, 2000, the Department received a request from NIPPON Metalworking U.S.A., Inc., (NIPPON) for a changed circumstance review seeking revocation, in part, of the antidumping duty (AD) order on nickel clad stainless steel sheet and strip in coils from Japan. The Department received a letter on September 6, 2000, from petitioners Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, the United Steelworkers of America, AFL–CIO/CLC, the Butler-Armco Independent Union, and the Zanesville Armco Independent Union, expressing no opposition to the request of NIPPON for revocation, in part, of the order pursuant to a changed circumstances review with respect to the subject merchandise defined in the Scope of the Review section below. Petitioners' request confirms that they have no objection to the retroactive application of the exclusion to the entries made from the date of the preliminary determination in the antidumping investigation, January 4, 1999, forward.

Pursuant to 19 CFR 351.222(g)(1)(i) we preliminarily determined that petitioners' affirmative statement of no interest constituted changed circumstances sufficient to warrant a review and partial revocation of the order. Consequently, on October 27, 2000, the Department published an initiation of a changed circumstances review and preliminary results of review with an intent to revoke the order in part (65 FR 64424).

The merchandise under review is currently classifiable under subheading 7219.90.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of Changed Circumstance Review

The products covered by this exclusion request and changed circumstances review are nickel clad stainless steel sheet and strip in coils from Japan. This nickel clad stainless steel sheet must satisfy each of the following specifications. The sheet must: (1) Have a maximum coil weight of 1000 pounds; (2) with a coil interior diameter of 458 mm to 540 mm; (3) with a thickness of .33 mm and a width of 699.4 mm; (4) fabricated in three layers with a middle layer of grade 316L or UNS 531603 sheet and strip sandwiched between the two layers of nickel cladding, using a roll bonding process to apply the nickel coating to each side of the stainless steel, each nickel coating being not less than 99 percent nickel and a minimum .038 mm in thickness. The resultant nickel clad stainless steel sheet and strip also must meet the following additional chemical composition requirement (by weight): The first layer weight is 14%, specification Ni201 or N02201, Carbon 0.009, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.992. The second layer weight is 72%, specification 316L or UNS 513603, Carbon 0.02, Silicon 0.87, Manganese 1.07, Phosphorus 0.033, Sulfur 0.001, Nickel 12.08, Chromium 17.81, Molybdenum 2.26, Iron 65.856 for a combined total of 100. The third layer is 14%, specification Ni201 or N02201, Carbon 0.01, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.993. The weight average weight is 100%. The following is the weighted average: Carbon 0.01706, silicon 0.6264, Manganese 0.7704, Phosphorus 0.02376, Sulfur 0.001, Nickel 36.6892, Chromium 12.8232, Molybdenum 1.62748, Iron 47.41912, and Copper is 0.00028. The above-described material sold as grade 316L and manufactured in accordance with UNS specification 531603. This material is classified at subheading 7219.90.00.20 of the Harmonized Tariff Schedule of the United States.

Comments

In the preliminary results, we provided parties the opportunity to comment (65 FR 64424). On October 31, 2000, and again on November 1, 2000 we received comments from counsel for Fuel Cell, Inc. and NIPPON requesting that the scope description in specification number two read as ''with a coil diameter of 458 millimeters to 540.'' The Department received additional comments from the Petitioners regarding NIPPON's request agreeing to the proposed amendments of the scope exclusion on November 14, 2000.

Final Results of Review and Partial Revocation of the Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning the nickel clad stainless steel sheet and strip in coils from Japan and the fact that no interested parties objected to our preliminary results of review, constitute changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on stainless steel sheet and strip in coils with respect to the product described above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.222(g)(1)(i).

The Department will instruct the Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of any unliquidated entries of the merchandise subject to this request, as specifically described in the ''Scope of Changed Circumstance Review'' section above, and entered, or withdrawn from the warehouse, for consumption on or after January 4, 1999. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of stainless steel sheet and strip in coils from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(g)(4).

This notice also serves as a final reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216, 351.221(c)(3), and 351.222(g) of the Department's regulations.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31636 Filed 12–11–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–815, C–533–821, C–560–813, C–791–810, C–549–818]

Notice of Initiation of Countervailing Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, South Africa, and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Countervailing Duty Investigations.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak (Argentina), at (202) 482–2209; Eric Greynolds (India), at (202) 482–6071; Stephanie Moore (Indonesia), at (202) 482–3692; Sally Gannon (South Africa), at 482–0162; and Dana Mermelstein (Thailand), at (202) 482–1391, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

INITIATION OF INVESTIGATIONS:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

The Petitions

On November 13, 2000, the Department of Commerce (the Department) received petitions filed in proper form on behalf of Bethlehem Steel Corporation; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a Unit of USX Corporation; Gallatin Steel Company; IPSCO Steel Inc.; Nucor Corporation; Steel Dynamics, Inc.; Weirton Steel Corporation, and the Independent Steelworkers Union (the petitioners). The United Steelworkers of America notified the Department that it also is a petitioning party in these investigations on November 16, 2000. The Department received from the petitioners information supplementing the petitions throughout the 20-day initiation period.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of certain hot-rolled carbon steel flat products (hot-rolled steel or subject merchandise) in Argentina, India, Indonesia, South Africa, and Thailand receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioners filed the petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act. The petitioners have demonstrated sufficient industry support with respect to each of the countervailing duty investigations which they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions,* below).

Scope of Investigations

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00,

7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by December 26, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the relevant foreign governments for consultations with respect to the petitions filed. The Department held consultations with representatives of the governments of Thailand on November 28, Argentina on November 29, and South Africa on November 30, 2000. *See* the memoranda to the file regarding these consultations (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099). The Government of Indonesia did not accept our invitation to hold consultations before the initiation. However, it has requested a meeting after initiation. The Government of India also did not accept our invitation to hold consultations before the initiation. It did, however, submit written comments on December 4, 2000. In addition, it has requested a meeting after initiation.

Determination of Industry Support for the Petitions

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law. [1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, ''the article subject to investigation'' is substantially similar to the scope of the Department's investigations involving hot-rolled carbon steel products initiated in 1998. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation,* 63 FR 56607 (October 22, 1998). The only differences are as follows: (1) A 2.25 percent silicon maximum content level (as opposed to 1.50 percent in the 1998 case); (2) the omission of maximum content levels for boron and titanium; and (3) the itemization of two additional examples of products specifically excluded from the scope, *i.e.,* all products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507), and non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS. The Department has reviewed reasonably available information to determine whether the products within the scope of the investigations constitute one or more than one domestic like product.

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel,* a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA, IF, and motor lamination steels as falling within categories of plain carbon sheet steels (*see* chapters 44, 45 and 52). Also, *Carbon and Alloy Steels,* published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). *Carbon and Alloy Steels* also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.,* pages 159 and 161).

We noted that, in the1998 hot-rolled steel investigations, we discussed these issues with representatives of the ITC and the International Trade Administration's (ITA's) Office of Trade Development. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the agency representatives cited reasons why the products in question might be treated as distinct from hot-rolled carbon steels. In addition to the research discussed above, the Department determined in

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

the 1998 hot-rolled steel investigations that, with respect to certain steel products, such as high-strength low-alloy steel, industry sources indicated that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications. *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation: Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998* (which is on file and publicly available in the Central Records Unit (CRU) of the Main Commerce Department building). We are unaware of any factual differences between the present case and the initiation of the 1998 hot-rolled steel investigations. Thus, based on our analysis of the information presented to the Department above and the information obtained and reviewed independently by the Department, we have determined that there is a single domestic like product which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, Section 702(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied upon not only the petition and amendments thereto, but also upon ''other information'' it obtained through research and which is attached to the Initiation Checklist for each country (*See Import Administration CVD Investigation Initiation Checklist (Initiation Checklist*), Attachment Re: Industry Support, December 4, 2000). Based on information from these sources, the Department determined, pursuant to Section 702(c)(4)(D), that there is support for the petition as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, India, Indonesia, South Africa, and Thailand, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of Section 702(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of Section 702(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* the December 4, 2000, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Injury Test

Because Argentina, India, Indonesia, South Africa, and Thailand are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated subsidized imports of the subject merchandise. Petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* the December 4, 2000, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the countervailing duty petitions on hot-rolled steel from Argentina, India, Indonesia, South Africa, and Thailand, and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of hot-rolled steel from these countries receive subsidies. *See* the December 4, 2000, memoranda to the file (for each country) regarding the initiation of each investigation (public versions on file in the Central Records Unit of the Department of Commerce, Room B–099).

A. Argentina

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Argentina:

1. *Equity Infusions Bestowed from 1984 through 1990*
2. *Government of Argentina Assumption of Debt*
3. *Relief from Liquidation Costs*
4. *Additional Subsidies from Reorganization/Privatization under Decree 1144/92*
5. *Investment Commitment*
6. *Tax Abatement Program*
7. *Rebate of Indirect Taxes (Reembolso)*
8. *Pre-and Post-shipment Export Financing*
9. *Zero-Tariff Turnkey Bill*

Creditworthiness

Petitioners have also alleged that Sociedad Mixta Siderurgica Argentina (SOMISA) was uncreditworthy in 1991 and 1992. To support this allegation, petitioners stated that the company had negative operating margins and negative return on sales in each of these two years. However, petitioners further stated that to fund these losses the company took on more long-term debt. Under the Department's policy, the presence of long-term borrowing generally constitutes dispositive evidence that a firm is creditworthy if such loans are provided without a government guarantee. *See* Section 351.505(a)(4)(ii) of the Department's CVD Regulations. Absent information that this debt was guaranteed by the Government of Argentina or other similar information, we do not plan to investigate SOMISA's alleged creditworthiness in 1991 and 1992.

B. India

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in India:

1. *The Passbook Scheme (PBS)*
2. *The Duty Entitlement Passbook Scheme—Pre- and Post-Export Credits (DEPBS)*
3. *Advanced, Advanced Intermediate and Special Imprest Import Licenses Under the Duty Exemption Scheme*
4. *Special Import Licenses (SIL)*
5. *Export Promotion Capital Goods Scheme (EPCGS)*
6. *Concessional Export Financing (Pre- and Post-shipment Export Financing)*
7. *Exemption of Export Credit from Interest Taxes*
8. *Income Tax Deductions Under Section 80 HHC*
9. *Loan Guarantees from the Government of India (GOI)*
10. *The GOI's Forgiveness of Steel Development Fund Loans Issued to Steel Authority of India Limited (SAIL)*
11. *GOI Forgiveness of Other Loans Issued to SAIL*
12. *Steel Development Fund (SDF) Loans*

In the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India (CTL Plate),* 64 FR 73131, 73138 (December 29, 1999), we determined that because the SDF was funded by producer levies and other non-GOI monies, there was no evidence of direct or indirect funding by the GOI. In addition, in *CTL Plate,* 64 FR at 73143, we determined that there was no evidence indicating that the GOI controlled the SDF. Therefore, we determined that the program was not countervailable.

However, new information provided in the petition has led us to reconsider our finding in *CTL Plate* regarding the GOI's level of control of the SDF. Section 771(5)(B)(iii) of the Act states that a subsidy is bestowed when an authority ''entrusts or directs a private entity to make a financial contribution.'' Given that the GOI apparently has the authority to waive SAIL's SDF loans, we determine that, for the purposes of this initiation, there is sufficient evidence to initiate an investigation of the GOI's ability to control the terms at which participating companies can borrow from the fund.

Creditworthiness

In their November 13, 2000 filing and their November 22, 2000 amended filing, petitioners allege that SAIL was uncreditworthy in each year during the period 1989 through March 31, 2000.[2]

Based on an analysis of the information provided by petitioners, including detailed data regarding SAIL's financial health between the years 1989 through 2000, we recommend initiating an investigation on whether SAIL was uncreditworthy only during the fiscal years 1999 and 2000. An examination of key financial ratios reveals general consistency during the fiscal years 1989 through 1998. Only in the fiscal years covering April 1, 1998, through March 31, 1999, and April 1, 1999, through March 31, 2000, do the ratios take a substantial negative turn, especially with regard to profit ratios. Additionally, petitioners have provided information indicating that SAIL neared being declared a ''sick'' company based on its 1998–99 financial information, but they have not provided evidence indicating that SAIL was on the verge of such a declaration before that time.

We note that it appears from SAIL's annual reports that the company received long-term loans from commercial sources that were outstanding as of the time of its 1999 annual report. The presence of such loans generally constitutes dispositive evidence that a firm is creditworthy if such loans are provided without a government guarantee (*see* Section 351.505(a)(4)(ii) of the Department's CVD Regulations). However, given certain specific allegations made by petitioners regarding loan guarantees by the GOI, it is possible that the loans highlighted in SAIL's annual reports do indeed contain guarantees by the GOI. On this basis, we are investigating whether SAIL was uncreditworthy during the fiscal years 1999 and 2000.

[2] SAIL's most recently completed fiscal year was March 31, 2000.

C. Indonesia

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Indonesia:

1. *1995 Equity Infusion into P.T. Krakatau Steel*
2. *Pre-1993 Equity Infusion*
3. *1989 Equity Infusion to Cold Rolling Mill of Indonesia (CRMI)*
4. *Three-Step Equity Infusion to CRMI*
5. *Two-Step Loan Program*
6. *Bank of Indonesia Rediscount Loan Program*

Creditworthiness

Petitioners have submitted information sufficient to warrant an examination of the creditworthiness of Krakatau and CRMI in the years in which these companies were approved for equity and other non-recurring benefits.

D. South Africa

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in South Africa:

1. *1996 and 1999 Equity Infusions into Saldanha Steel (Proprietary) Limited (Saldanha)*
2. *Industrial Development Corporation (IDC) Loans*
3. *Impofin Loan Guarantees*
4. *Section 37E Tax Allowances*

Creditworthiness

Petitioners have submitted information sufficient to warrant an examination of the creditworthiness of Saldanha in the years in which the company was approved for equity and other non-recurring benefits.

E. Thailand

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Thailand:

1. *Duty Exemptions on Imports of Raw and Essential Materials Under Section 30 of the Investment Promotion Act (IPA)*

2. *Duty Exemptions on Imports of Machinery Under IPA Section 28*
3. *Exemptions from VAT Under Section 21(4) of the VAT Act*
4. *Corporate Income Tax Exemptions Under IPA Section 31*
5. *Additional Tax Deductions Under IPA Section 35*
6. *IPA Subsidies for Construction of SSI's On-Site Power Plant*
7. *IPA Subsidies for Building and Operating the Prachuab Port*
8. *SSI Debt Restructuring*
9. *LPN Debt Restructuring*
10. *Loans from the Industrial Finance Corporation of Thailand (IFCT) and the Thai Export-Import Bank*
11. *Other Loans and Loan Guarantees from Banks Owned, Controlled, or Influenced by the RTG*
12. *Export Packing Credits*
13. *Pre-shipment Finance Facilities*
14. *Export Insurance Program*
15. *Trust Receipt Financing for Raw Materials*
16. *Tax Certificates for Export*
17. *Import Duty Exemptions for Industrial Estates*
18. *Export Processing Zone Incentives*
19. *Provision of Water Infrastructure for Less Than Adequate Remuneration*
20. *Provision of Electricity for Less Than Adequate Remuneration*

Creditworthiness

Petitioners allege that both Sahaviriya Steel Industries Pcl (SSI) and LPN Plate Mill Pcl. (LPN) have been uncreditworthy since 1996. Our review of the information provided by the petitioners indicates that SSI was able to issue debentures to the public in 1995, and it was not until 1996 that these debentures lost their value. While SSI's financial ratios were very weak in 1995, it was not until the end of 1996 that the company's ratios indicated that they were in serious financial difficulty and would have trouble meeting their debt obligations; in fact, SSI defaulted on its convertible bond issue in July 1998. The company continued to experience serious financial difficulties through at least the third quarter of 1999. As such, we will examine whether SSI was uncrediworthy from 1997 through 1999. With respect to LPN, we have examined the ratios based on information submitted by petitioners and we consider that the company's financial position, while deteriorating, was not critical until 1996. While petitioners were unable to obtain financial statements for the years after 1997, other evidence provided by the petitioners indicates that LPN continued to experience financial difficulties through the third quarter of 1999. Thus, we will examine whether LPN was uncreditworthy from 1997 through 1999.

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in Thailand:

1. *Fuel subsidies for SSI.* Petitioners allege that the preliminary plans for the Steel Based Industrial Estate, where SSI is located, called for it to build a power plant on site to supply its steel mills. This plan called for SSI to start a ''special purpose joint venture'' to build the plant and receive Board of Investment (BoI) incentives similar to its other companies. Petitioners further allege that SSI was going to obtain fuel from PTT, Thailand's national oil company. Petitioners contend that PTT was going to provide SSI with fuel at international prices well below those available to other Thai producers. The Sahaviriya Power Plant Report that petitioners reference states ''that it will be critical to insure that they (PTT) provide competitive pricing in the same fashion that they do to EGAT.'' Although petitioners have alleged that ''competitive'' pricing constitutes a benefit, they have provided no information to support their allegation that the fuel is provided for less than adequate remuneration in accordance with section 771(5)(E)(iv) of the Act.

Steel Scrap Export restrictions. Petitioners allege that Thailand imposes an export duty on scrap iron and steel. Petitioners claim that a financial contribution and benefit would be conferred under such export restrictions because, by the RTG's prevention of scrap exports, Thai steelmakers would gain a supply of low-priced steel scrap, an input in the steelmaking process. Petitioners contend that such a program would satisfy specificity requirements because steel producers are the primary users of steel scrap. We note that although economic theory would indicate that steel scrap export restrictions in Thailand might artificially lower domestic steel scrap prices, the Department requires information demonstrating that the restrictions had a downward pressure on steel scrap prices in order to meet the threshold of initiation. The petitioners did not provide sufficient information to support their allegation that the export restraints have ''led directly to a discernible lowering of input costs.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 103–316, at 257.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of Argentina, India, Indonesia, South Africa, and Thailand. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by December 28, 2000, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of certain hot-rolled carbon steel flat products from Argentina, India, Indonesia, South Africa, and Thailand. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: December 4, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31634 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120400C]

Availability of a Draft Environmental Assessment/Finding of No Significant Impact and Receipt of an Application for an Incidental Take Permit (1272)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS received an application for an incidental take permit (Permit) from the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, ODFW and WDFW have also prepared a conservation plan (Plan)

designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful sport and commercial fisheries on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest. The duration of the proposed Permit and Plan is 1 year. The Permit application includes the proposed Plan submitted by ODFW and WDFW. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit application. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application, Plan, and draft EA must be received at the appropriate address or fax number no later than 5 p.m. Pacific standard time on January 11, 2001.

ADDRESSES: Written comments on the application, Plan, or draft EA should be sent to Enrique Patino, Sustainable Fisheries Division, F/NWR2, 7600 Sand point Way NE, Seattle, WA, 98115-0070. Comments may also be sent via fax to 206-526-6736. Comments will not be accepted if submitted via e-mail or the internet. Requests for copies of the Permit application, Plan, and draft EA should be directed to the Sustainable Fisheries Division (SFD), F/NWR2, 7600 Sand point Way NE, Seattle, WA, 98115-0070. Comments received will also be available for public inspection, by appointment, during normal business hours by calling 206-526-4655.

FOR FURTHER INFORMATION CONTACT: Enrique Patino, Seattle, WA (ph: 206-526-4655, fax: 206-526-6736, e-mail: Enrique.Patino@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are included in the Plan and Permit application:

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) spring, threatened(SnR) summer, endangered Upper Columbia river spring (UCR), threatened Upper Willamette River spring (UWR) (LCR), threatened lower Columbia River spring (LCR).

Steelhead (*O. mykiss*): threatened SnR, endangered naturally produced and artificially propagated UCR, threatened middle Columbia River (MCR), threatened LCR, threatened Upper Willamette River (UWR).

Sockeye Salmon (*Oncorhynchus nerka*): endangered SnR.

To date, protective regulations for threatened LCR chinook salmon under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened LCR chinook salmon. The initiation of a 30-day public comment period on the application, including its proposed takes of threatened LCR chinook salmon does not presuppose the contents of the eventual protective regulations.

Background

Winter/spring/summer (w/s/s) season fisheries in the Columbia River have been managed since 1996 under provisions of the 1996-1998 Management Agreement for Upper Columbia River Spring Chinook, Summer Chinook and Sockeye. The Management Agreement modified provisions of the Columbia River Fish Management Plan (CRFMP) to include additional provisions for newly listed species. The CRFMP, and thus the associated Management Agreement, expired by their own terms on December 31, 1998, but were extended by agreement of the parties and court order through July 31, 1999. Since NMFS was a signatory party to the CRFMP, and approval of the CRFMP was a Federal action subject to ESA section 7 consultation, incidental take associated with the ODFW and WDFW fisheries was authorized in biological opinions issued on the CRFMP. NMFS has advised the states that, with the expiration of the CRFMP, and absent any subsequent agreement among the parties to *U.S.*v.*Oregon*, there is no longer a Federal action that provides a nexus for ESA section 7 consultation. Because the immediate prospects for reaching an agreement remain uncertain, ODFW and WDFW have applied for a 1-year ESA section 10(a)(1)(B) permit for incidental takes of ESA-listed adult and juvenile salmonids associated with sport and commercial fisheries during the w/s/s season 2001 on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest.

Conservation Plan

The Conservation Plan prepared by ODFW and WDFW describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed anadromous salmonids associated with some or all of the following fisheries which are expected to occur from January 1 through July 31, 2001, with approximate dates as specified:

Winter commercial sturgeon fishery: January and February 2001.

Winter commercial salmon fishery: February through April 2001.

Spring chinook commercial fishery - Select Areas: April through June 2001.

Smelt commercial fishery/test fishery: December 1 through March 31, 2001.

Anchovy and herring commercial bait fishery: Year round.

Shad commercial fishery - Area 2S: Mid-May through early August 2001.

Shad commercial fishery - Washougal Reef: May and June 2001.

Sockeye commercial fishery: June and July 2001.

Spring chinook sport fishery - mainstem Columbia River: January 1 through March 31, 2001.

Spring chinook sport fishery - Select Areas: Year round.

Steelhead/trout sport fishery - mainstem Columbia River: May 16 to October 31 below the I-5 Bridge and from June 16 to December 31 above the I-5 Bridge up to the Highway 395 Bridge at Pasco, Washington

Spring chinook/steelhead sport fishery - Ringold: January 1 through March 31, 2001.

Smelt recreational fishery

Shad recreational fishery: Late May and early July 2001.

Sockeye recreational fishery: June and July 2001.

Sturgeon recreational fishery: March through July 2001.

Warmwater recreational fishery: Year round

Spring chinook test fishery - Corbett: April 2001.

Sturgeon tagging stock assessment project: May through July 2001.

Spring chinook Indian subsistence fishery - Wanapum Tribe: May through July 2001.

ESA-listed fish incidental mortalities associated with the ODFW and WDFW fishery programs are requested at levels

specified in the Permit application. ODFW/WDFW are proposing to limit state in-river fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Seven alternatives for the ODFW and WDFW fisheries were provided in the Plan, including: (1) historic baseline; (2) Columbia River Fish Management Plan; (3) Willamette subbasin Plan; (4) Willamette spring Chinook fishery Management and evaluation Plan; (5) 1996-99 Management agreement Limits;(6) 1996-99 Actual Harvest Rates; and (7) No action.

Environmental Assessment/Finding of No Significant Impact

The EA package includes a draft EA and a draft Finding of No Significant Impact (FONSI) which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Two Federal action alternatives have been analyzed in the EA, including: (1) the no action alternative; and (2) issue a permit with conditions.

This notice is provided pursuant to section 10 of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: December 7, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–31650 Filed 12–11–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000803225-0326-02; I.D. 062900B]

RIN 0648-AO34

American Shad; Interstate Fishery Management Plans; Cancellation of Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of determination of compliance; cancellation of moratorium.

SUMMARY: The Secretary of Commerce (Secretary) announces the cancellation of the Federal moratorium on fishing for American shad in the coastal waters of the State of South Carolina that would have been implemented on January 5, 2001. The Secretary has canceled the moratorium as required by the Atlantic Coastal Fisheries Cooperative Management Act (Act), based on his determination that the State of South Carolina is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for Shad and River Herring, after the Commission had notified the Secretary that it was withdrawing its determination of noncompliance.

DATES: Effective December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301-427-2014.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2000, NMFS published a document in the **Federal Register** (65 FR 49969) announcing the Secretary's determination that the State of South Carolina was not in compliance with the Commission's ISFMP for Shad and River Herring for not implementing and enforcing the 10-fish creel limit contained in the ISFMP for American shad. In the document a moratorium was declared on fishing for American shad in South Carolina state waters that would be made effective on January 5, 2001, if South Carolina was not found to be in compliance by December 15, 2000. Details were provided in the August 16, 2000, **Federal Register** document and are not repeated here.

The Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If the State is determined to be in compliance, the moratorium shall be terminated.

Activities Pursuant to the Act

On November 7, 2000, the Secretary received a letter from the Commission prepared pursuant to the Act. The Commission's letter, dated November 6, 2000, stated that the State of South Carolina had taken corrective action to comply with the Commission's ISFMP for Shad and River Herring, and, therefore, the Commission was withdrawing its determination of noncompliance.

Cancellation of the Moratorium

Based on the Commission's November 6, 2000, letter, information received from the State of South Carolina, and the Secretary's review of South Carolina's revised regulations, the Secretary concurs with the Commission's determination that South Carolina is now in compliance with the Commission's ISFMP for Shad and River Herring. The State has adopted a creel limit of 10 American shad in all watersheds except one. In that one watershed the 10-fish creel compliance requirement has been met through the imposition of management measures that provide conservation equivalency. Therefore, the moratorium on fishing for American shad in South Carolina waters is canceled.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31626 Filed 12–11–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001027300–0300–01]

RIN 0648–ZA96

The Argo Project: Global Ocean Observations for Understanding and Prediction of Climate Variability

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the Office of

Oceanic and Atmospheric Research (OAR), on behalf of the National Ocean Partnership Program (NOPP), is entertaining preliminary proposals (Letters of Intent) and subsequently full proposals for implementing the next phase of the U.S. contribution to the global Argo array of profiling floats. The NOPP was established by 10 U.S.C. 7902 *et seq.* to (1) promote the national goals of assuring national security, advancing economic development, protecting qualify of life, and strengthening science education and communication through improved knowledge of the ocean; and (2) coordinate and strengthen oceanographic efforts in support of those goals by identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication. In 1999, Argo was identified as a key NOPP program and selected for implementation. In FY 2001, NOAA intends to begin the long-term deployment and operation of Argo. Contingent on the availability of appropriated funds, this phase of Argo is expected to continue for five years. The level of funding available each year will be dependent on appropriations. It is expected that approximately $3,000,000 will available on a continuing basis for the project.

Timetable: January 12, 2001, 5 pm (EST)—One Letter of Intent (LOI) (not required) due at NOAA/Office of Oceanic and Atmospheric Research. The LOI may be transmitted by facsimile or electronic mail.

March 16, 2001, 5 pm (EST)—One original plus two copies of the full proposal due at NOAA/Office of Oceanic and Atmospheric Research. If color and/or grayscale graphics are included in the proposal, and offerer feels that color or grayscale graphics would be necessary for the review process, the offerer may submit twelve additional copies of these graphics. The proposal must clearly delineate each partner's efforts and the associated request(s) for NOPP funds as well as any cost-sharing. Separate budgets within the single proposal will be required if more than one funding action is needed. Facsimile or electronic transmissions of the full proposal will not be accepted.

July 1, 2001 (approximate)—Funds awarded to selected recipients. Program begins.

ADDRESSES: Letters of Intent (LOI) and Proposal submissions must be directed to the Office of Oceanic and Atmospheric Research at: Office of Oceanic and Atmospheric Research; National Oceanic and Atmospheric Administration, R/OSS2; ATTN: Dr. Stephen R. Piotrowicz; SSMC3, Room 11554; 1315 East-West Highway; Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen R. Piotrowicz at the above address, or at phone: (301) 713–2465 Ext. 124, Facsimile: (301) 713–0158, internet: Steve.Piotrowicz@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 49 U.S.C. 44720(b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.,* (CFDA No. 11.431)—Climate and Atmospheric Research.

II. Program Description

Background

Argo, a broad-scale global array of temperature/salinity profiling floats, is planned as a major component of the ocean observing system, with deployment scheduled to begin in 2000. Conceptually, Argo builds on the existing upper-ocean thermal networks, extending their spatial and temporal coverage, depth range and accuracy, and enhancing them through addition of salinity and velocity measurements. Argo is designed to have a strong complementary relationship with the Jason altimeter mission. For the first time, the physical state of the upper ocean will be systematically measured and assimilated in near real-time.

The objectives of Argo fall into several categories. Argo will provide a quantitative description of the evolving state of the upper ocean and the patterns of ocean climate variability, including heat and freshwater storage and transport. The data will enhance the value of the Jason altimeter through measurement of subsurface vertical structure (T(z), S(z)) and reference velocity, with sufficient coverage and resolution for interpretation of altimetric sea surface height variability. Argo data will be used for initialization of ocean and coupled forecast models, data assimilation and dynamical model testing. A primary focus of Argo is seasonal to decadal climate variability and predictability, but a wide range of applications for high-quality global ocean analyses is anticipated.

The initial design of the Argo network is based on experience from the present observing system, on newly gained knowledge of variability from the TOPEX/Poseidon altimeter, and on estimated requirements for climate and high-resolution ocean models. All Argo data will be publicly available in near real-time via the GTS, and in scientifically quality-controlled form with a few months delay. Global coverage should be achieved during the Global Ocean Data Assimilation Experiment (GODAE), which together with CLIVAR (CLImate VARiability and Predictability Program) and GCOS/GOOS, provide the major scientific and operational impetus for Argo. The design emphasizes the need to integrate Argo within the overall framework of the global ocean observing system.

International planning for Argo, including sampling and technical issues, is coordinated by the Argo Science Team. Nations presently having Argo plans that include float procurement or procurement, include Australia, Canada, France, Japan, U.K., and U.S.A., plus a European Union proposal. Combined deployments from these nations are expected to exceed 700 floats per year by 2002.

Funding Availability

This RFP is to implement the NOAA component of the U.S. contribution to Argo. Actual funding levels will depend upon the final FY 2001 budget appropriations. This Program Announcement is for a program to be conducted by investigators both inside and outside of NOAA, over a five year period. It is expected, though not certain, that a single program involving multiple investigators will be funded. In accordance with the NOPP, team efforts among academia, industry, and government participants with cost sharing proposals are very strongly encouraged. For Federal Government investigators, funding will be provided through intra- or interagency transfers, as appropriate. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaborative between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposal projects. NOAA will make decisions regarding the use of the a cooperative agreement on a case-by-case basis.

III. Eligibility

Eligible applicants are institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments and Federal agencies. Applicants from non-Federal and Federal applicants will be

competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intraagency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer. **Please Note:** Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 USC 1535) is not an appropriate legal basis.

IV. Evaluation Criteria

Evaluations of the proposals will use the following selection criteria:

1. Overall technical merits of the proposal, including (20%):

a. Deployment strategy, including how the proposed strategy complements and/or supplements other components of the observing system as they relate to operational predictions, as well as to the objectives of CLIVAR and GODAE;

b. Deployment logistics, including communications as well ad deployment; and

c. Data management.

2. Relevance of the proposed program to NOPP objectives of developing a better understanding of oceans and establishing U.S. leadership in oceanography through a formal partnership mechanism including (20%)

a. Data accessibility,

b. Broad participation within the oceanographic community,

c. Partners with a long-term commitment to the proposed objectives;

d. Resource sharing among partners, and

e. The degree of cost-sharing by partners with the requested Partnership funding.

3. The offeror's capabilities, related experience, and facilities or unique combinations of these that are critical to the program's objectives (20%).

4. The qualifications and experience of the proposed principal investigator(s) and key personnel (20%).

5. The degree of significant partnering among at least two of the following parties: Academia, industry or government (10%).

6. Realism of the proposed costs (10%).

V. Selection Procedures

All proposals, including those submitted by NOAA employees, will be evaluated and ranked using the criteria above by: (1) Independent peer mail review, and/or (2) independent peer panel review; both NOAA and non-NOAA experts in the field may be used in this process. The program officer will no be a voting member of an independent peer panel. The results of the peer reviews are provided to the NOPP Interagency Working Group. The NOPP Interagency Working Group determines the proposals to be funded, subject to the concurrence of the National Ocean Research Council (NORLC) for funding. The NORLC reviews and approves a NOPP program at a regular NORLC meeting. An award may be selected outside of the ranking order provided by the peer mail or peer panel reviewers. Reasons for an award outside of the ranking order are logistical (*e.g,* access to deployment platforms) and timeliness (*e.g.,* it takes an unusually long time, for example, a couple of years from receipt of funding to full deployment of floats supported each year). The Program Manager will also determine the total duration of funding. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

V. Instruction for Application

What To Submit

Letter of Intent

To prevent the expenditure of effort that may not be successful, it is in the best interest of applicants to submit letters of intent, however, it is not a requirement. Letters for Intent must be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 x 297 mm) or 8½″ x 11″ paper. The following information should be included:

(1) Title page: The title page should clearly identify the program area being addressed by starting the project title with ''The Argo Project: Global ocean observations for understanding and prediction of climate variability.'' Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being requested should be listed for each budget period.

(2) A concise (2-page limit) description of the program including a brief summary of work to be completed, methodology to be used, approximate costs of the major elements (salaries and benefits; direct costs such as float acquisition and preparation, communications and data management; travel, including deployment costs; indirect costs) of the project. Evaluation will be by program management. It is in the best interest of applicants and their institutions to submit letters of intent; however, it is not a requirement. Facsimile and electronic mail are acceptable for letters of intent only. Projects deemed suitable during Letters of Intent (LOI) review will be encouraged to submit full proposals.

(3) Resumes (1-page limit) of the Principal Investigators.

Full Proposed Guidelines

Each full proposal must include the first seven items listed below; the standard forms included as Item 8 will only be required for proposal(s) selected for funding. All pages should be single- or double-spaced, typewritten in at least a 10-point front, and printed on metric A4 (210 x 297 mm) or 8½″ x 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals, therefore, the Program Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify program by starting the title ''The Argo Project: Global ocean observations for understanding and prediction of climate variability.'' The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each year of the program; the total should include all subrecipient's budgets on projects involving multiple institutions.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) Program Description/Work Statement (15-page limit): The Program Description should include

identification of the problem, objectives (both operational and scientific) of the work, relevance to the operational prediction mission, proposed implementation strategy, proposed methodology (*e.g.,* float acquisition, communications, deployment), and a transition plan for long-term data management. The following elements should be described in detail:

(a) Deployment strategy: The program should include a plan for interactions with the operational and research communities with regard to the deployment strategy for the U.S. contribution to the global 3-degree array. The program should describe with whom interactions will occur, and how their recommendations will be considered to determine the configuration of the array that you intend to deploy. The program should also address how the proposed deployment strategy complements and/or supplements other components of the observing system as they relate to operational predictions, as well as to the objectives of CLIVAR (CLImate VARiability program) and GODAE (Global Ocean Data Assimilation Experiment).

(b) Deployment logistics: All costs associated with the implementation of Argo should be included, including communications and deployment costs. The proposal should demonstrate that access to appropriate deployment platforms (ships, aircraft) is available to implement the strategy being proposed.

(c) Data Management: The proposal should also include a plan for continued inter-comparison of floats from different manufacturers within the consortium and within the international science group. It should illustrate how real-time (within 24 hour) delivery of data will be achieved. Since the implementation of the global Argo array will be the responsibility of several international groups that may change over time, the proposal must include a plan for maintaining the integrity of the data system (data flow and quality control) over the lifetime of the program.

(4) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Subcontracts should have a separate budget page. Matching funds must be indicated. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For all applications, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support: Applicants must provide the following information on the relationship between this project and other work planned, anticipated, or underway under Federal assistance: current and pending support for ongoing projects and proposals, subsequent funding in the case of continuing grants, and the number of person-months per year to be devoted by the principal investigator to each project.

(6) Vitae (2 pages maximum per investigator): Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) Results from prior research: The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, Principal Investigators, of award and total award. The section should be a brief summary and should not exceed two pages total.

(8) Standard Application Forms: For proposal(s) selected for funding, the following forms must also be submitted: (a) Standard Form 424, Application for Federal Assistance, and 424B, Assurances-Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter ''11.431'' for the CFDA Number and ''Climate and Atmospheric Research'' for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying'', and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, § 26.105 105) are subject to 15 CFR part 26, ''Non-Procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, § 26.605) are subject to 15 CFR part 26, subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions'', and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VI. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any

verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(D) No Obligation of Future Funding—If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(F) Name and Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(G) Intergovernmental Review—This program is subject to the requirements of OMB Circular No. A–110, and 15 CFR part 14, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations'', to State and Local Governments'', as applicable. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(H) False Statements—A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(I) Purchase of American-Made Equipment and Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(J) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(K) For awards receiving funding for the collection or production of geospatial data (*e.g.,* GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (*http://www.fgdc.gov/standards/standards/html*)

(L) Notwithstanding any other provision of the law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current, valid OMB control number.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0328–0043, 348–0040, and 0348–0046. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Dated: December 6, 2000.

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 00–31607 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Meeting on the Telephone Number Mapping (ENUM) Protocol

AGENCY: National Telecommunications and Information Administration.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, will hold a roundtable to discuss and explore issues related to the Internet Engineering Task Force's (IETF) Telephone Number Mapping (ENUM) protocol and the work being undertaken between the IETF and the International Telecommunication Union (ITU) Study Group 2 (SG2) to consider how number resolution using ENUM may be affected by public switched telephone network infrastructure and telephone numbering administration.

DATES: The meeting will be held from 12:30 p.m. to 5:00 p.m., Monday, December 18, 2000.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Room B841A, 1401 Constitution Avenue, NW., Washington, DC. The meeting will be open to the public.

FOR FURTHER INFORMATION: For further information, please contact Karen Rose, Office of International Affairs, NTIA, telephone: (202) 482–1866. Individuals wishing to attend the meeting should send an e-mail with the participants name, organizational affiliation, and telephone number to <krose@ntia.doc.gov> with a subject line entitled ENUM ROUNDTABLE or call Ms. Rose with this information at the above-listed number.

SUPPLEMENTARY INFORMATION: Currently, communications users require a number of different identifiers to be reachable through various communications

networks and services. For example, a user might have an e-mail address, a telephone number, and a fax number, among others. The ENUM protocol, the result of work of the Internet Engineering Task Force's (IETF's) Telephone Number Mapping working group (<http://www.ietf.org/html.charters/enum-charter.html>), is designed to allow communications users to be reachable using standard telephone numbers (E.164 numbers) as a universal communications identifier. The ENUM protocol uses the Internet domain name system (DNS) to resolve E.164 numbers into the specific routing information needed to connect users through a chosen communication path. E.164 is an International Telecommunications Union (ITU) Recommendation that provides the number structure used for international public telecommunication numbering plan. The ENUM protocol itself is defined in IETF document ''E.164 number and DNS'' (RFC 2916) (see website above).

As part of the its work, the IETF engaged the ITU to consider how number resolution using ENUM might be affected by public switched telephone network infrastructure and telephone numbering plans, such as the ITU E.164 standard. Work in the ITU has been undertaken in ITU Telecommunication Standardization Sector (ITU-T) Study Group 2 (SG 2) Working Party 1 (WP1), which recently held a meeting in Berlin, Germany on October 16–26, 2000. Among other issues, SG2/WP1 meeting discussed issues raised by ENUM, and particularly, the method for administering and maintaining ENUM E.164-based resources in the DNS. The SG2/WP1 meeting resulted in the issuance of a liaison statement to the IETF that set forth a view on how E.164 resources should be administered, as well identifying other issues for further consideration (See <http://www.itu.int/infocom/enum/wp1–39_rev1.htm>).

The December 18 meeting intends to explore and stimulate discussion on issues raised by ENUM, including those raised by recent ITU work. To facilitate an exchange of views, the meeting will be structured as a roundtable discussion. The tentative agenda for the meeting (subject to change) is as follows:

1. Welcome.
2. Technical overview of ENUM and examples of possible services enabled by the ENUM protocol.
3. Exploration and discussion of issues raised by ENUM and ENUM numbering administration.
4. Discussion of ITU SG2/WP1 meeting results and possible US approaches to SG2/WP1 to the issue going forward.
5. Discussion on additional steps for progressing consideration of the issue.
6. Summary.

Public Participation

The meeting will be open to the public an is physically accessible to people with disabilities. Individuals wishing to attend should send an e-mail with the participants name, organizational affiliation, and telephone number to <krose@ntia.doc.gov> with a subject line entitled ENUM ROUNDTABLE or call Ms. Rose at (202) 482–1866 with this information. To facilitate entry into the Department of Commerce building, please have a photo identification and/or a U.S. Government building pass, if applicable. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Ms. Rose at least three (3) days prior to the roundtable at the above-listed e-mail address or telephone number.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 00–31630 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Secrecy, License to Export.

Form Number(s): N/A.

Agency Approval Number: 0651–0034.

Type of Request: Extension of a currently approved collection.

Burden: 1,298 hours annually.

Number of Respondents: 1,862 responses per year. Of this total, the USPTO expects that approximately 6 per year for petition for rescission of secrecy order, 3 per year for permit to disclose or modification of secrecy order, 1 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 with a corresponding U.S. application on file, and 99 per year for a petition for retroactive license will be filed.

Avg. Hours Per Response: It is estimated to take an average of 3.0 hours for permit for rescission of secrecy order; 2.0 hours for permit to disclose or modification 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 for the public to gather, prepare and submit the various petitions.

Needs and Uses: 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. When an invention is determined to be detrimental to national security, the Commissioner of Patents must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. 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 U.S.C. 181–188 and administered through 37 CFR Ch. 1, Part 5, 5.1–5.3. There are no forms associated with this collection of information.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

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 Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at susan.brown@uspto.gov.

Written comments and recommendations for the proposed information collection should be sent on or before January 11, 2001 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 2000.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 00–31505 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 6, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 2000 limits.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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.

In a notice published in the **Federal Register** on September 11, 1996 (61 FR 47892), CITA announced that Customs would be conducting investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in certain categories, produced or manufactured in China and entered into the United States with the incorrect country of origin, were entered in circumvention of the Bilateral Textile Memorandum of Understanding (MOU) dated February 1, 1997 between the Governments of the United States and the People's Republic of China. Consultations were held between the Governments of the United States and the People's Republic of China on this matter on June 28–29, 2000 and October 30–31, 2000. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge certain amounts to the 2000 quota levels.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. Any charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to the February 1, 1997 MOU between the Governments of the United States and the People's Republic of China.

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 69228, published on December 10, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Textile Memorandum of Understanding dated February 1, 1997, between the Governments of the United States and the People's Republic of China, you are directed, effective on December 15, 2000, to charge the following amounts to the following categories for the 2000 restraint period (see directive dated December 6, 1999):

Category	Amounts to be charged
237	76 dozen.
239	25,582 kilograms.
331	23,206 dozen pairs.
336	79 dozen.
338/339	29,743 dozen.
338–S/339–S	37,766 dozen.
340	468 dozen.
340–Z	781 dozen.
341	1,505 dozen.
341–Y	85 dozen.
345	281 dozen.
347/348	8,536 dozen.
350	150 dozen.
352	6,784 dozen.
359–O	11,763 kilograms.
433	435 dozen.
435	42 dozen.
438	360 dozen.
442	45 dozen.
445/446	1,021 dozen.
448	37 dozen.
459	2,010 kilograms.
634	559 dozen.
635	1,211 dozen.
636	41 dozen.
638/639	942 dozen.
640	238 dozen.
641	11,425 dozen.
642	24 dozen.
645/646	1,355 dozen.
647	211 dozen.
648	712 dozen.
649	2,457 dozen.
652	12,026 dozen.
659–H	2,955 kilograms.
659–O	118 kilograms.
670–L	18,274 kilograms.
835	25 dozen.
836	14 dozen.
838	1,863 dozen.
840	221 dozen.
842	1 dozen.
845	1,603 dozen.
847	552 dozen.
859	7 kilograms.

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,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31456 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 12, 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 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 339/639 is being increased for special shift, reducing the limit for Categories 338/

638 to account for the special shift being applied.

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 50495, published on September 17, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 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 cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 12, 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]
338/638	1,273,518 dozen.
339/639	1,253,898 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,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31608 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATIONS OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

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 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 import restraint limits for textile products, produced or manufactured in Oman and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2001 period.

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). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	165,198 dozen.
335/635	305,322 dozen.
338/339	633,544 dozen.
340/640	305,322 dozen.
341/641	228,991 dozen.
347/348	1,091,526 dozen.
647/648/847	468,064 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31609 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

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 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 import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 2001 through December 31, 2001 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see 49 FR 493, as amended, published on January 4, 1984.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

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). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
313	2,586,806 square meters.
314	1,940,104 square meters.
315	4,668,865 square meters.
333/833	184,913 dozen.
334	446,955 dozen.
335/835	234,225 dozen.
338/339	1,010,862 dozen.
340	441,235 dozen.
341/840	184,912 dozen.
347/348	788,967 dozen.
350	41,766 dozen.
352	281,254 dozen.
359pt. [1]	1,008,847 kilograms.
360	2,607,141 numbers.
361	1,738,095 numbers.
369pt. [2]	457,545 kilograms.
410	180,325 square meters.
433/434	9,988 dozen.
435	10,447 dozen.
442	12,099 dozen.
443	93,338 numbers.
444	44,001 numbers.
447/448	24,266 dozen.
604	1,721,378 kilograms.
638/639	966,899 dozen.
640	132,982 dozen.
647/648	229,551 dozen.
666	192,789 kilograms.

[1] Category 359pt.: all HTS numbers except 6406.99.1550.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. These limits do not apply to products exported under the Outward Processing Program.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 14, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated December 29, 1983, as amended, (49 FR 493). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31610 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0049, Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to procedures for submitting requests for exemptive, no-action, and interpretative letters.

DATES: Comments must be submitted on or before February 12, 2001.

ADDRESSES: Comments may be mailed to Christopher W. Cummings, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20851.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings (202) 418–5445; FAX: (202) 418–5536; email: ccummings@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters, OMB control number 3038–0049—Extension.

Commission Rule 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 140.99	280	On occasion	280	7.0	1,957

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests for such letters in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request may involve analytical work and analysis, as well as the work of drafting the request itself.

Dated: December 6, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–31532 Filed 12–11–00; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for National Service-Learning Clearinghouse

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') announces the availability of approximately $300,000 to support the initial phase of a cooperative agreement of up to three years to provide National Service-Learning Clearinghouse services. We expect that the initial funding will represent roughly one-half of the first year's budget. The Corporation will enter into a cooperative agreement with the organization selected under this Notice to provide service-learning Clearinghouse services to grantees and subgrantees supported by the Corporation and to the service-learning field. This will include: (A) Overall Administration of the Clearinghouse activities; (B) Technology Management, which includes operation and staffing of toll-free telephone lines and assistance, databases, listservs, and a web site; and (C) Information Management, which includes library service functions such as: collecting, organizing, analyzing, abstracting and disseminating information and materials about service-learning principles, programs, effective practices, resources, and research.

The Clearinghouse will collect and disseminate information and materials related to service-learning. Pertinent subtopics include service-learning in

and partnerships among: K–12 schools; higher education institutions; community-based organizations; Indian Tribes and U.S. territories, especially Learn and Serve America grantees and subgrantees; and AmeriCorps, National Senior Service Corps and other programs and projects involved in service-learning.

Note: This notice concerns the selection of an organization to provide service-learning Clearinghouse services. This is not a notice for program grant proposals.

DATES: Conference call: A conference call is scheduled for those who have questions related to this competition. The date and time is: Tuesday, December 19, 2000, 3 p.m. Eastern Time. To sign up for this conference call, please call Pat Carpenter at 1–202–606–5000, ext. 209 by Friday, December 15, 2000, at 12 noon.

Due date: Proposals must be received by the Corporation by 5 p.m. Eastern time on Friday, January 26, 2001.

ADDRESSES: Submit proposals to the Corporation for National and Community Service, Attention: Juanita Peoples, Room 8404–B, Box NSLC, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Brad Lewis at the Corporation for National and Community Service, telephone (202) 606–5000, ext. 113, (*BLewis@cns.gov*), facsimile (202) 565–2781. This Notice is available on the Corporation's web site, at: *http://www.nationalservice.org/whatshot/notices/*.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation was established in 1993 to engage Americans of all ages and backgrounds in service to their communities. (See 42 U.S.C. 12501, *et seq.*) The Corporation's national and community service programs provide opportunities for participants to serve full-time and part-time, with or without stipend, as individuals or as part of a team. Learn and Serve America integrates community service into the academic life or experiences of more than one and a half million youth from kindergarten through higher education in all 50 states, Indian Tribes and U.S. territories, through grants to state education agencies, community-based organizations, and higher education institutions and organizations. AmeriCorps*State, National, VISTA, and National Civilian Community Corps programs engage thousands of Americans on a full-time or part-time basis, at over 1,000 locations, to help communities meet their toughest challenges. The National Senior Service Corps utilizes the skills, talents and experience of over 500,000 older Americans to help make communities stronger, safer, healthier and smarter. For additional information on the national service programs supported by the Corporation, see the ''Glossary of Terms'' in Section VI of this Notice or go to http://www.nationalservice.org.

II. Eligibility

Public-sector agencies, non-profit organizations, institutions of higher education, and Indian Tribes that: (1) Have extensive experience with administering library and/or Clearinghouse services, and (2) have knowledge of service-learning, are eligible to apply. Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying, is not eligible to apply.

The successful applicant must be a strong administrative entity that offers Clearinghouse services to grantees and the public as ''one-stop-shopping'' through a single comprehensive website and a toll-free telephone line. It may be necessary, therefore, for applicants to consider planning to work in conjunction with a small number of other organizations to obtain needed expertise. The Corporation wants to minimize the administrative time, effort, and cost associated with managing multiple agreements in the operation of the Clearinghouse and, therefore, values concentration of duties in a minimum number of organizations. Whatever the number of organizations involved, the Corporation requires that the successful applicant and the other organizations present the Clearinghouse to the public as a single entity funded by and working with the Corporation.

A successful applicant must demonstrate an exemplary track record in all relevant areas outlined below, as well as the capacity to handle all tasks with or without contracting for needed services. An applicant that proposes to work in conjunction with others should outline a plan to select, monitor and administer those organizations, including assessing their expertise, and determining the role they will play in meeting the requirements of this Notice. For example (and this is only an example, not a recommendation or requirement), an applicant might have in-house exemplary expertise and capacity in library science and information technology, and may plan to select organizations with exemplary expertise and capacity in school-based service-learning (including tribal service-learning), higher education service-learning, and community-based service-learning. Alternatively, an applicant might have exemplary expertise and capacity in two or more of these areas, thereby reducing the number of organizations involved. In any case, an applicant must indicate in the application its intention to work with other organizations. We anticipate that the successful applicant will select any other organizations within three months of the award. All proposed arrangements with other organizations are subject to Corporation review and approval. Organizations may provide Clearinghouse services even if they are also receiving or applying for other Corporation funds.

Based on previous Clearinghouse competitions and our estimate of potential applicants, we expect fewer than ten applications to be submitted.

III. Conditions

A. Legal Authority

Section 118 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12551, authorizes the Corporation to establish a Clearinghouse with respect to information about service-learning. Section 198 of the same Act, as amended, 42 U.S.C. 12653, authorizes the Corporation to provide training and technical assistance in support of activities under the national service laws.

B. Cooperative Agreements

The award made under this Notice will be in the form of a cooperative agreement. Administration of cooperative agreements is pursuant to Uniform Administrative Requirements in Corporation regulations, 45 CFR Part 2541 (for agreements with state and local government agencies) and 45 CFR Part 2543 (for agreements with institutions of higher education, hospitals and other non-profit organizations). The awardee must comply with semi-annual program and fiscal reporting requirements, linking progress on deliverables to expenditures.

C. Time Frame and Funding

The Corporation expects that activities funded under the agreement awarded through this Notice will commence on or about April 1, 2001, following the conclusion of the selection and award process. The Corporation will make an award covering a period not to exceed three years. Applications must include a

proposed budget and proposed activities for three years, with a line-item budget and detailed workplan for the first one-year budget period only. Of the funds available for this award $300,000 is presently available. We expect that the initial funding will represent roughly one-half of the first year's budget. If the Corporation approves an application and enters into a multi-year award agreement, at the outset it will provide funding based only on funds presently available for the first year's budget, with the balance of the funding for the first year's budget and the subsequent years pending the availability of funding from Congressional appropriations for Fiscal Year 2002 and subsequent years. Additional funding is contingent upon satisfactory performance, availability of funds, and any other criteria established in the award agreement.

D. Collection and Use of Materials—Reservation of Rights

To ensure that Clearinghouse library materials collected and generated with Corporation funding for training and technical assistance purposes remain available to the public and readily accessible to grantees and sub-grantees: (1) The awardee will be the custodian of the materials purchased or otherwise obtained for the Clearinghouse library of service-learning information and only for the duration of the cooperative agreement; and (2) the Corporation retains royalty-free, non-exclusive, and irrevocable licenses to use, reproduce, publish, or disseminate publications and materials, including data, produced under the agreement, and to authorize others to do so. The awardee must agree to make publications and materials available to the national service field as identified by the Corporation at no cost or at the cost of reproduction. All materials collected and developed for the Corporation must comply with Corporation editorial and publication guidelines. The Clearinghouse is required to make reasonable accommodation for individuals with disabilities who seek to access the Clearinghouse.

IV. Scope of National Service-Learning Clearinghouse Activities To Be Supported

A. Essential Functions and Deliverables

The organization selected under this Notice will provide service-learning Clearinghouse services to Corporation grantees and their sub-grantees, comprising Learn and Serve America programs, AmeriCorps and National Senior Service Corps programs, as well as the general public. This will include: (A) Overall Administration of the Clearinghouse activities; (B) Technology Management, which includes operation and staffing of toll-free telephone lines and assistance, databases, listservs, and a web site; and (C) Information Management, which includes library functions such as: collecting, organizing, analyzing, abstracting and disseminating information and materials about service-learning principles, programs, effective practices, resources, and research. Specific essential functions and deliverables include:

1. Library—Maintain, continuously expand and update the existing Clearinghouse library of high-quality service-learning program and training designs, supporting materials, videos, CD-Roms, curricula, models, effective practices, research and evaluation reports, books, monographs, and periodical literature (not necessarily all physically housed in one place) with web-accessible annotated bibliographies and abstracts.

2. Web Site—Operate, maintain and improve a state-of-the-art, easily navigable World Wide Web site (the point of access for the majority of Clearinghouse users) providing service-learning resources including, but not limited to: a searchable database of abstracted archive holdings; on-line versions of available current printed materials (including papers, articles, essays and other media); a calendar of service-learning events; chat rooms or other web-based communication methods; a directory of Learn and Serve America grantee and subgrantee program information; and a user-friendly annotated list of links to other websites, thereby presenting the Clearinghouse as a primary resource for service-learning on the Web (current site: http://umn.edu/serve).

3. Toll-free telephone lines—Operate and maintain toll-free telephone lines and assistance, accessible nationwide.

4. Program Database—Maintain and update, in collaboration with the Corporation, the existing database of approximately 2,000 Learn and Serve America grantees and subgrantees, searchable through the Clearinghouse website, including program descriptions and aggregate program and participant characteristics.

5. Listservs—Manage listservs of grantees and others with regular postings to stimulate service-learning conversation, share information, and draw attention to upcoming events and new publications (including approximately six lists currently being hosted) and maintain a searchable archive.

6. Marketing—Develop and implement a proactive and cost-effective marketing plan and information dissemination plan for the Clearinghouse and build relationships with the client base. The Corporation expects the Clearinghouse provider to develop and execute effective strategies for working with key service-learning stakeholders, other federal initiatives, and the field.

7. Frequently Asked Questions—Produce at least bi-weekly ''Frequently Asked Questions'' (FAQs) and answers focusing on pertinent issues and available related resources; publish FAQs on appropriate listservs and make them available in archives on the website and hardcopy.

8. Journal—Publish an annual service-learning journal or monograph with a circulation of at least 7,000, utilizing Learn and Serve America grantees as authors and editorial board members, focusing on themes around current issues in policy and practice in school-based, higher education, and/or community-based service-learning.

9. Collaboration—Collaborate with the National Service-Learning Exchange (the Exchange) and other Corporation-funded national training and technical assistance providers to develop and maintain a system for referring Clearinghouse clients whose needs require training or technical assistance beyond the scope of Clearinghouse responsibilities. In addition, collaborate with the Exchange and other experts to identify and address the field's information needs and resources.

10. Evaluation—Evaluate the impact of Clearinghouse services. Evaluation should focus on client satisfaction with both ease of access and usefulness of information. The evaluation should assess quality and quantity of Clearinghouse services provided, including, but not limited to: website effectiveness and use; on-line and telephone consultation; and materials dissemination in accordance with the essential functions and deliverables of this Notice.

11. Accessible Materials and Services—Provide materials that are accessible to persons with disabilities, and incorporate into all activities planning for needs of clients without Internet access, by using accessible technology, providing materials in alternate formats upon request, captioning videos, and not relying solely on a non-voice-over format, and, when indicating a telephone number, by including a non-voice telephone alternative such as TTY/TDD or e-mail.

12. Wide Range of Materials and Services—Design services that cover a

range of basic to advanced topics that can reach and benefit clients who are at different levels of expertise and who may come from a variety of organizations, including remote programs and/or programs in rural areas.

13. Other Activities—Carry out such other activities as the Corporation and the provider reasonably determine to be appropriate.

B. Other Requirements

1. Staff and Consultant Training—Train Clearinghouse staff and consultants as necessary in the background, approach, vocabulary, assets, needs, and objectives of the Corporation and each of its program streams and substreams. (See Section VI, ''Glossary of Terms.'')

2. Independent Assessment—In addition to reviewing records submitted by the provider, the Corporation may conduct independent assessments of the provider's performance and expect the provider's cooperation with reasonable requests in this regard.

3. Corporation Meetings—Participate as requested by the Corporation in the planning and implementation of meetings and training events.

4. Collaboration with Others—Collaborate with and support the National Service-Learning Leader Schools program, and the President's Student Service Challenge program, wherever feasible and appropriate, and share effective practices with other providers through the training and technical assistance listserv and other mechanisms (*e.g.,* the National Service Resource Center see: *http://www.etr.org/NSRC/index.html*), and coordinate with other providers in order to avoid duplication.

5. Communications with Corporation Staff—With the Corporation's Clearinghouse Program Officer, develop a plan for on-going communication with the Corporation regarding Clearinghouse activities and the needs of the field.

6. Attribution—Identify the Corporation for National Service as primary sponsor of all Clearinghouse materials and activities in all print, electronic and other communications.

7. Adherence to Circulars—Adhere to all applicable Office of Management and Budget (OMB) circulars.

V. Application Guidelines

A. Proposal Content and Submission.

You must submit one (1) unbound, original proposal and two (2) copies. You must complete the Standard Form 424 (SF 424)—Application for Federal Assistance, Standard Form 424A (SF 424A)—Budget Forms, and Standard Form 424B (SF 424B)—Assurances. These forms are available on the web at: *http://www.nationalservice.org/whatshot/notices.* An outline, which must be included, is limited to two pages, while the remainder of this section may be up to 20 additional double-spaced, single-sided, typed pages with at least one inch margins and no smaller than 12-point font. Proposals may not be submitted by facsimile. Proposals must include the following:

1. Outline.

A one-to-two page outline of all proposed Clearinghouse activities and materials including a schematic diagram outlining the task and information flow for the proposed design.

2. Information Collection/Organization/Marketing/Dissemination Plan.

Applications must include:

a. Proposed Strategy: The applicant's proposed strategy and supporting rationale for providing service-learning Clearinghouse services to a diverse national audience. The applicant should address the specific deliverables and requirements outlined in Section IV—Scope of National Service-Learning Clearinghouse Activities of this Notice. An application that proposes to work in conjunction with other organizations must outline a plan to select, monitor and administer these organizations, including assessing the organization's expertise, and determining the role they will play in meeting the requirements of this Notice.

b. Work Plan: A detailed one-year work plan and timeline for completing all Clearinghouse activities. The work plan should include all deliverables and the tasks leading to them. The work plan should account for necessary start-up activities, including the transfer of the Clearinghouse collection of print, video, and other library materials, as well as electronic files, from the current provider.

c. Evaluation Plan: A plan for regularly evaluating performance and reporting findings and proposed improvements to the Corporation.

3. Description of Organizational Capacity

a. Organizational Chart: An organizational chart that clearly shows the place of the Clearinghouse provider in its parent organization's structure, as well as that of other relevant units of the parent organization, and the proposed relationship of any organizations to the provider.

b. Organizational Capacity Narrative: Describe your:

i. capacity to provide nationwide Clearinghouse services, as outlined in this notice, under the direction of a single administrative entity;

ii. capacity to collect and disseminate information and materials related to service-learning or plan to contract with organizations having specific recognized capacity to complement the provider's experience to address all essential functions effectively;

iii. capacity in modern information systems, including website design and management, listserv management, database management, fax on demand and print-scanning capacity, or a plan to contract with organizations having specific recognized capacity to provide these services;

iv. knowledge of and/or experience with service-learning in: K–12 schools; higher education institutions; community-based organizations; Tribes and U.S. territories, especially Learn and Serve America grantees and subgrantees; and AmeriCorps, National Senior Service Corps and other programs and projects involved in service-learning;

v. financial management capacity to operate the Clearinghouse; and

vi. staff strengths and backgrounds. (Resumes shall be included in an appendix; this information is not subject to the page limits that are otherwise applicable.)

4. Budget

Include a detailed, line-item budget for the first year with hours and costs organized by activities and deliverables outlined in the main strategy and work plan narrative, and a projected overall budget for the second and third years. Use Standard Form 424B for the first year budget information. This form does not count towards the 20-page limit. Financial reporting throughout the term of the cooperative agreement must be organized so that all costs are attributed to specific activities and deliverables. Costs in proposed budgets must consist solely of costs allowable under applicable cost principles found in OMB Circulars A–21, A–122, and/or A–87, as appropriate. [OMB website:—*http://www.whitehouse.gov/OMB/Circulars/index.html*] Provider match is not required. The Corporation welcomes, however, any evidence that its funding leverages other resources.

5. Budget Narrative

Provide a budget narrative that is organized to parallel all items in the line-item budget and that includes the explanation and cost basis for all cost estimates that appear in the line-item budget. The narrative should clearly

show how each cost was derived, using equations to reflect all factors considered, including unit costs of deliverables, where applicable.

6. Appendices (No more than 5 items.)

Items may include:
i. A list of references that can be contacted related to this work;
ii. Referral to the address of an applicant-designed web site;
iii. A brochure or other publicity item, and/or
iv. Staff resumes.
(Do not submit video or cassette tapes.)

B. Selection Criteria

To ensure fairness to all applicants, the Corporation reserves the right to disqualify any proposal that fails to comply with the requirements relating to submission deadline, page limits, line spacing, margins and font size. The Corporation will assess qualified applications based on the criteria listed below. Staff may conduct interviews in person or through conference calls before recommending an organization for approval. Following the review process, we will notify applicants of their status in writing.

1. Quality of Plan (30%)

The Corporation will consider the quality of the proposed activities based on:

a. Soundness of Proposed Strategy: Evidence of the cost-effectiveness, comprehensiveness, and creativity of applicant's approach to providing services as described in this Notice.

b. Understanding of the Corporation's Programs: Evidence of the applicant's understanding and ability to meet the Corporation's service-learning Clearinghouse essential functions as outlined in this Notice, the goals of the Department of Service-Learning, and the goals of the Corporation for National Service (see Section VI. ''Glossary'' and the Corporation for National Service website: *www.nationalservice.org*).

2. Organizational and Personnel Capacity (40%)

The Corporation will consider the organizational capacity of the applicant to deliver the proposed services based on:

a. Organizational and Staff Experience: Evidence of organizational and staff capability and experience in administration, delivery of high-quality information services in a flexible, responsive, collaborative and creative manner, and experience or knowledge of service-learning.

b. Grant Experience: Demonstrated ability either to manage federal funding or to otherwise apply sound fiscal management principles to grants and cost accounting.

3. Evaluation (10%)

The Corporation will consider how the applicant plans to evaluate its work based on:

a. Scope of Plan—Assessment of the effectiveness of—and need for—its services and products delivered under the award, which may include a review of stakeholder satisfaction, a survey of users, and/or a feedback section on the website.

b. Continuous Improvement—Plans to use assessments of its services and products to modify and improve subsequent services and products.

4. Budget (20%)

The Corporation will consider the budget based on:

a. Cost-effectiveness: Cost of each proposed activity in relation to the scope and depth of the services proposed. A demonstrated commitment to providing services in the most cost-effective manner possible will be a major consideration in the evaluation of proposals.

b. Scope: Comprehensiveness of the budget related to the proposed Clearinghouse activity (*e.g.,* publications, website improvements, listserv interventions, etc.).

c. Clarity: The thoroughness of the budget and budget narrative, including the basis for all cost estimates (see specifications under ''Budget Narrative'').

VI. Glossary of Terms

Department of Service-Learning Long-Term Goals

The Corporation's Department of Service-Learning (DSL) long-term goals are to:

DSL 1. Identify, enhance, and promote the direct and demonstrable ''getting things done'' outcomes of student service and service-learning.

DSL 2. Identify, enhance, and promote the community-strengthening outcomes of student service and service-learning.

DSL 3. Identify, enhance, and promote the participant development outcomes of student service and service-learning.

DSL 4. Facilitate the progression from community service to quality service-learning within and across the sectors of Learn and Serve America, throughout the field of service-learning and within the streams of national service.

DSL 5. Increase the number of individuals who participate in service-learning including but not limited to all relevant stakeholders, and especially the participation of students in service-learning from kindergarten through higher education.

DSL 6. Foster, strengthen, and identify civic participation as an outcome of service-learning.

DSL 7. Improve the quality and practice of service-learning through professional and leadership development.

DSL 8. Engage, support, and recognize youth and students as leaders in the design and implementation of effective student service and service-learning initiatives.

While we refer to our participants as students, we encompass all youth, parents, educators and adult volunteers in our goals and priorities.

Grantees

Entities funded directly by the Corporation. These include and are not limited to: state commissions; state education agencies; Indian Tribes and U.S. Territories; AmeriCorps National Direct parent organizations; institutions, consortia and organizations of higher education; local governments; and non-profit organizations. Many grantees also subgrant a significant portion of their funds to others (*e.g.,* a State Commission conducts a competition and review process and funds AmeriCorps programs throughout a State; a State Education Agency (SEA) conducts a competition and review process and funds school systems throughout a state). None of the 1,300 Senior Corps grantees is permitted to subgrant.

National Service-Learning Exchange

The National Service-Learning Exchange, led by the National Youth Leadership Council, supports service-learning programs in schools, institutions of higher education, and community organizations through peer-based training and technical assistance. The Exchange links programs with local peer mentors, refers programs to regional trainers, and informs programs of regional service-learning events and initiatives. *http://www.lsaexchange.org/*

National Service Resource Center (NSRC)

The National Service Resource Center (NSRC) serves as a repository of information on all aspects of national service. The NSRC manages most of the Corporation's listservs and its web site includes a calendar of training events and links to all current providers. The NSRC also has a lending library. Training and technical assistance publications are posted or distributed by

the NSRC. Providers must be required to submit copies of their training materials and training scripts to the National Service Resource Center. *http://www.etr.org/NSRC/index.html.*

Service-Learning

The Corporation uses the definition provided in the National and Community Service Trust Act of 1993 (section 101 (23); 42 U.S.C. 12511 (23)), which defines service-learning as an educational method:

- Under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community;
- That is coordinated within an elementary school, secondary school, institution of higher education, or community service program, and with the community;
- That helps foster civic responsibility;
- That is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participant is enrolled; and
- That provides structured time for the students or participants to reflect on the service experience.

Streams of Service

Refers to the Corporation's three main programs: AmeriCorps, Learn and Serve America and National Senior Service Corps.

Subgrantees

Many Corporation grantees competitively award a significant portion of their funds to other entities known as subgrantees. State Commissions, for example, subgrant to local non-profit organizations. Senior Corps programs do not subgrant (see ''Grantees'').

Substream of Service

Refers to the categories within each of the above streams and includes the following:

AmeriCorps: AmeriCorps*State; AmeriCorps*National Direct; AmeriCorps*VISTA; AmeriCorps*National Civilian Community Corps.

Learn and Serve America: Learn and Serve America K–12 School-Based, Community-Based Programs and Tribal Programs; Learn and Serve America Higher Education Programs.

National Senior Service Corps: Foster Grandparent Program; Retired and Senior Volunteer Program (RSVP); Senior Companion Program.

Training and Technical Assistance Listserv: Currently managed by the National Service Resource Center, the training and technical assistance listserv is one of the ways providers share best practices with one another. Providers also share effective practices through the National Service Resource Center and the National Service-Learning Clearinghouse.

(Catalog of Federal Domestic Assistance: #94.004 Learn and Serve America—School- and Community-Based Programs. #94.005 Learn and Serve America—Higher Education)

Dated: December 6, 2000.

Amy Cohen,

Acting Director, Department of Service-Learning, Corporation for National and Community Service.

[FR Doc. 00–31534 Filed 12–11–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The leader, regulatory information management group, office of the chief information officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 6, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Performance Reporting Forms for National Institute on Disability and Rehabilitation Research (NIDRR) Grantees (Rehabilitation Engineering Research Centers (RERCs), Rehabilitation Research Training Centers (RRTCs), Disability and Business Technical Assistance Centers (DBTACs), Disability and Rehabilitation Research Projects (DRRPs), Model Systems, Dissemination & Utilization Projects).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 193.

Burden Hours: 3,088.

Abstract: This data collection will be conducted annually to obtain program and performance information from NIDRR grantees on their project activities. The information collected will assist federal NIDRR staff in responding to Government Performance and Results Act. Data will primarily be collected through an internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila_Carey at (202) 708–6287 or via her internet address Sheila_Carey @ed.gov. Individuals who

use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31529 Filed 12–11–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 6, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: America's Career Resource Network State Grant Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 4,720.

Abstract: Section 118(e) of the Carl D. Perkins Act (PL 105–332) requires the Department of Education to report annually to Congress on specific activities carried out by States via grants under Section 118. This information can be obtained via the annual progress reports required of grantees by Section 74.51 Education Department General Administrative Regulations (EDGAR).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31530 Filed 12–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The leader, regulatory information management group, office of the chief information officer invites comments on the submission for OMB review as required by the paperwork reduction act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 6, 200.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Federal Class Size Reduction Program.

Frequency: On occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,298.

Burden Hours: 1,044.

Abstract: For the past two years, the federal government has supported an effort to promote the hiring of high quality teachers to reduce the size of classrooms in the early elementary grades. This evaluation looks at the early implementation of the program and assesses how the federal class size

reduction (CSR) funds were spent, what issues arose in implementing the program, the impact of the program on class size, and the impact of the program on teaching.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31531 Filed 12–11–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.116A; 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of those institutions and other public and private nonprofit institutions and agencies.

Deadline for Transmittal of Preapplications: January 26, 2001.

Deadline for Transmittal of Final Applications: April 27, 2001.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: June 26, 2001.

Applications Available: December 12, 2000.

Available Funds: It is anticipated that approximately $17,000,000 will be available for an estimated 130 new awards under the Comprehensive Program. The actual level of funding, if any, is contingent on final congressional action and the number and quality of applications.

Estimated Range of Awards: $50,000 to $200,000 per year.

Estimated Average Size of Awards: $131,000.

Estimated Number of Awards: 130.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Priorities

Invitational Priorities

While applicants may propose any project within the scope of 20 U.S.C. 1138(a), under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Projects to make more productive use of resources to improve teaching and learning; and to increase learning productivity—that is, to transform programs and teaching to promote more student learning relative to institutional resources expended.

Invitational Priority 2—Projects to disseminate innovative postsecondary educational programs which have already been locally developed, implemented, and evaluated.

Invitational Priority 3—Projects to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for low-income and underrepresented minority students, whose retention and completion rates continue to lag disturbingly behind those of other groups.

Invitational Priority 4—Projects to improve campus climates for learning by creating an environment that is safe, welcoming, and conducive to academic growth for all students.

Invitational Priority 5—Projects to support innovative reforms of undergraduate, graduate, and professional curricula that improve not only what students learn, but how they learn.

Invitational Priority 6—Projects to support the professional development of full- and part-time faculty by assessing and rewarding effective teaching; promoting new and more effective teaching methods; and improving the preparation of graduate students who will be future faculty members.

Invitational Priority 7—Projects to promote innovative school-college partnerships and to improve the preparation of K–12 teachers, in order to enhance students' preparation for, access to, and success in college.

Methods for Applying Selection Criteria

For preapplications (preliminary applications) and final applications (applications), the Secretary gives equal weight to each of the selection criteria. Within each of these criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating preapplications and final applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

Preapplications. In evaluating preapplications, the Secretary uses the following selection criteria:

(a) *Need for the project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed

project for the quality of its evaluation, as determined by the extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Final Applications. In evaluating final applications, the Secretary uses the following selection criteria:

(a) *Need for the project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(e) *The quality of the management plan.* The Secretary reviews each proposed project for the quality of its management plan, as determined by the plan's adequacy to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of project personnel.* The Secretary reviews each proposed project for the quality of project personnel who will carry out the proposed project, as determined by the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(g) *Adequacy of resources.* The Secretary reviews each proposed project for the adequacy of its resources, as determined by the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116A.

FOR FURTHER INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544. Telephone: (202) 502–7500. The application text may be obtained from the Internet address *http://www.ed.gov/FIPSE/.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact listed under **FOR FURTHER INFORMATION CONTACT.**

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Program Authority: 20 U.S.C. 1138–1138d.

Dated: December 5, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–31517 Filed 12–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Establish the Worker Advocacy Advisory Committee

Pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (Pub. No. 92–463), and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015(a), this is notice of intent to establish the Worker Advocacy Advisory Committee. This intent to establish follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy and the Assistant Secretary for Environment, Safety and Health with advice, information, and recommendations on programs to assist workers who have been diagnosed with work-related illnesses under the Department of Energy's former worker medical surveillance program and ongoing beryllium medical surveillance programs in filing state workers' compensation claims. The Committee will: (1) Provide advice to the Department of Energy on workers' compensation policy issues of concern to the Department; (2) periodically review worker advocacy program initiatives and recommendations; and, (3) provide advice on plans, priorities, and strategies to improve advocacy practices and procedures of the worker advocacy program.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints, including state and federal workers' compensation specialists, workers, union representatives, occupational physicians, representatives of medical and public health organizations, academic researchers and the public at large who may significantly contribute to the deliberations of the Committee. All meetings of this Committee will be published ahead of time in the **Federal Register**.

Additionally, the establishment of the Worker Advocacy Advisory Committee is essential to the conduct of Department of Energy business, and is in the public interest.

Further information regarding this committee may be obtained from Dr. David Michaels, Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, Washington, DC 20585, phone (202) 586–6151.

Issued in Washington, DC on December 7, 2000.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 00–31598 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Morgantown, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–01NT40951 entitled, ''Support of Advanced Coal Research at U.S. Colleges and Universities.'' Proposals will be subjected to a comparative merit review by a technical panel of DOE subject-matter experts and external peer reviewers. Awards will be made to a limited number of proposers based on: the scientific merit of the proposals, application of relevant program policy factors, and the availability of funds.

DATES: The solicitation will be available on the DOE/ NETL's Homepage at http:/www.netl.doe.gov/business on or about December 15, 2000. Applications must be received at NETL by February 8, 2001.

FOR FURTHER INFORMATION CONTACT: Michael P. Nolan, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880, E-Mail: mnolan@netl.doe.gov, Telephone: (304) 285–4149, Facsimile: (304) 285–4683.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE–PS26–01NT40951, the DOE is interested in applications from U.S. colleges and universities, as well as university-affiliated research centers submitting applications through their respective universities. Applications will be selected to complement and enhance research being conducted in related Fossil Energy Programs. Applications may be submitted individually (*i.e.,* by only one college/university or one college subcontracting with one other college/university) or jointly (*i.e.,* by ''teams'' made up of (1) three or more colleges/universities, or (2) two or more colleges/universities and at least one industrial partner. Collaboration, in the form of joint proposals, is encouraged but not required.

Eligibility. Applications submitted in response to this solicitation must address coal research in one of the key focus areas of the Core Program or as outlined in the Innovative Concepts Phase-I & Phase-II Programs.

Background. The current landscape of the U.S. energy industry, not unlike that in other parts of the world, is undergoing a transformation driven by changes such as deregulation of power generation, more stringent environmental standards and regulations, climate change concerns, and other market forces. Energy from coal-fired powerplants will continue to play a dominant role as an energy source, and therefore, it is prudent to use this resource wisely and ensure that it remains part of the sustainable energy solution.

Clean, efficient, competitively priced coal-derived products, and low-cost environmental compliance and energy systems remain key to our continuing prosperity and our commitment to tackle environmental challenges, including climate change. Technological advances finding their way into future markets could result in advanced co-production and co-processing facilities around the world, based upon Vision 21 technologies developed through universities, government, and industry partnerships.

This Vision 21 concept, in many ways is the culmination of decades of power and fuels research and development. Within the Vision 21 plants, the full energy potential of fossil fuel feedstocks and ''opportunity'' feedstocks such as biomass, petroleum coke, and other materials that might otherwise be considered as wastes, can be tapped by integrating advanced technology ''modules.'' To accomplish the program objective, to advance the science of coal R&D directed at resolving our energy and environmental issues, applications will be accepted in three program areas: (1) The Core Program and (2) the Innovative Concepts Phase-I Program, and (3) the Innovative Concepts Phase-II Program.

UCR Core Program

DOE has allotted $2 million to fund 8 to 10 projects in this program area. The goal of this area is to complement and enhance applied research conducted in related Fossil Energy Programs. Funding is contingent on the length of the project and varies from

$80,000, $140,000, or $200,000 for a project performance period of 12, 13–24, or 25–60 months, respectively for institutions submitting a single application. Additionally, an institution teaming with two other colleges or universities or two colleges/universities teaming with at least one industrial partner is eligible to receive $400,000 in funding for a 36-month project. Joint University/Industry applications must specify a minimum of twenty-five percent (25%) cost sharing of the total proposed project cost. At least one student must receive financial assistance throughout the duration of the grant.

Under the Core Program, research in this area is limited to the following six (6) Core Focus Areas and is listed numerically in descending order of programmatic priority.

1. *Advanced Sensors for Vision 21 Systems*—US DOE is interested in unique approaches in developing advanced sensors and control systems for advanced efficient energy production with zero emission, and related by-product production as envisioned in Vision 21 plans. Future energy production facilities may operate at high temperature environment, real-time temperature measurement (to 3000 °F) of flame, and surfaces (including slags) is needed. Miniaturized temperature sensors that can perform these tasks are a plus. Eliminating fine particulate is critical for gasification and for emission control. Grant applications are sought for proposals to develop particulate sensors capable of measuring concentration, size, and distribution of fine particulate. Particle sizes of interest are from a fraction of a millimeter down to microns. In addition, sensors for measuring trace contaminants in fuels and/or carbon dioxide from advanced gas separation processes would be needed to eliminate any interference with their utilization. Sensors using new mechanisms and with digital output that can be connected into control systems would be preferable. The intended applications are energy production related including advanced combustion facilities, gasifiers, turbines, flue gas cleanup and monitoring, fuel cells, and carbon sequestration, etc.

2. *Materials Development for Advanced Systems Through Nanostructure Science and Technology*—Nanostructured materials are believed to have the potential to revolutionize the way materials are created and used. Any material (metal, ceramic, polymer, glass, composite) created from nanoscale building blocks (clusters or nanoparticles, nanotubes, nanolayers, etc.) that are themselves synthesized from atoms and molecules, can be assembled to form novel structures with unique properties unlike those exhibited by materials composed of microstructures. Thus with the ability to synthesize and control materials in nanometer dimensions, new materials with unprecedented performance properties can be designed [1].

This focus area seeks proposals that will emphasize synthesis, characterization, or engineering development of nanoscale materials that have direct application to advanced power and ultra-clean fuels systems, such as those described in the Vision 21 Program. The DOE–NETL is particularly interested in those projects that seek a new and improved understanding of the relationships between nanostructures and properties and how these can be manipulated to improve efficiencies and performance. For example, nanostructured alloys may hold the potential to be competitors to some oxide dispersion-strengthened ferritic alloys currently being considered for high-temperature heat exchanger tubing, or ultrahigh temperature materials such as the Laves phases intermetallic alloys (*e.g.,* Cr-Cr_2Nb or Cr-Cr_2Ta).

Grant applications are sought for proposals to develop novel, ultrahigh temperature nanostructured alloys and that explores structure/property relationships would be of great interest. Other areas of programmatic interest include using nanostructured materials as advanced environmental barrier coatings, elucidating a better understanding of the fundamental mechanisms in plastic/elastic deformation and fracture of nanostructured materials, synthesizing, characterizing or using nanostructured carbons, or other similar derivatives, as hydrogen storage materials or in gas (H_2, CO_2, CO, CH_4, etc.) separation processes.

References

[1] Siegel, R., Hu, E., Roco, M. ''Nanostructure Science and Technology: A Worldwide Study, WTEC Panel Report on Nanostructure Science and Technology: R&D Status and Trends in Nanoparticles, Nanostructured Materials, and Nanodevices,'' NSF Cooperative Agreement ENG–9707092, International Technology Research Institute at Loyola College, Maryland, August 1999 (also see www.itri.loyola.edu/nano/final/).

3. *Solid-Oxide Fuel Cells*—Solid Oxide Fuel Cells (SOFCs) are a very promising energy conversion technology for utilization of fossil fuels. A new Department of Energy initiative the Solid State Energy Conversion Alliance (SECA) is currently focused on providing the technology to commercialize 400/kW SOFC systems by 2010. It is envisioned that this technology will provide a key component in an integrated coal based Vision 21 power plant. The high temperatures of operation (necessary for adequate ionic conductivity and kinetics) conventionally require layered ceramic materials in a solid state configuration. Research opportunities exist in making high power density SOFCs a commercial reality. Topics being considered for this solicitation are new compatible intermediate temperature material combinations (500–800 °C) for the cell structure, new sulfur and/or oxygen tolerant anode materials, and new cathode materials with good kinetics in the intermediate temperature range. In addition, research addressing the integration of SOFC's into a Vision 21 coal-based power plant is of interest.

Grant applications are sought for proposals to develop intermediate temperature material sets for Solid-Oxide Fuel Cells or addressing SOFC integration issues in Vision 21 coal-based power plants. The intermediate temperature range of interest is 500°C to 800°C although an individual concept does not have to be applicable to the entire range. The concepts and materials proposed must be compatible as part of a fully functional SOFC stack with a lifetime of 40,000 hours. The concepts and materials must be economically compatible with a 2010 SECA cost goal of $100/kW for the fuel cell stack and a $400/kW total system cost. Proposals can address one or all of the research issues, as well as the stated lifetime, compatibility, and economic criteria.

4. *Modeling of Molecule-surface Interactions*—Recent advances in modeling algorithms and computational capabilities have permitted some development of highly detailed computational models of molecule-surface interactions. Such models are of great interest to those developing catalytic materials because the models may suggest more fruitful directions and eliminate unproductive pathways. Further development will permit predictive models that may be able to chemically describe the ideal catalyst for a desired reaction pathway. Grant applications are desired for application and validation of such models to catalytic systems that would produce synthetic fuels or chemicals from coal based synthesis gas.

5. *Liquid Transportation Fuels/ hydrocarbon Reformulation*—Fuel cell power may provide a viable pathway for the transportation industry to deploy high efficiency, ultra-low emissions vehicles. Two sources for the hydrogen fuel include centralized production or

on-board production of hydrogen through reforming of *liquid* hydrocarbon mixtures. The latter route could enable nearer-term utilization of fuel cell power until a hydrogen distribution infrastructure is established. Coal-derived Fischer-Tropsch (F–T) liquids are candidate hydrogen carriers for the vehicle's refoming units because of their favorable hydrogen to carbon ratio and near-zero sulfur content. Other chemicals such as methanol or chemical mixtures other than F–T liquids may also have advantages as hydrogen sources. However, the chemistry involved in reforming these hydrocarbons needs to be better understood, particularly the nature of the by-products.

Grant applications are sought for proposals to investigate the kinetics and thermodynamics of the reforming chemistry associated with converting a selected hydrocarbon (other than methane) or hydrocarbon mixture to hydrogen and byproduct species. A combination of modeling and laboratory research is also needed to provide the basis for more comprehensive evaluations of the merits of utilizing selected hydrogen carriers for fuel cell applications.

6. *Modeling of Refractory Materials in Coal Gasification Systems*—Refractories represent a critical material for the commercial operation of future Vision 21 Systems. Refractories for public utility systems constitute less than 1 percent of all refractories produced, with coal gasification systems comprising only a small part of this total. Much of the research for coal gasification systems was conducted in the 1980s and funded by the U.S. Department of Energy (DOE). Refractory manufacturers have little incentive to develop materials for a coal gasifier market that may exist 10–15 years in the future.

Specific examples of refractory needs in fossil fuel power generation include higher temperature applications in slagging gasifiers, materials able to withstand both oxidizing and reducing environments, high thermal conductivity materials for use in areas where rapid heat transfer is necessary (to increase operating efficiency), and materials with sufficient thermal shock resistance to withstand both scheduled and non-scheduled shut downs. Grant applications are sought for proposals to develop refractory material models which consider the combined effect of chemical or phase changes in the material and thermal cycling on the stress state of the refractory.

UCR Innovative Concepts Phase-I Program

DOE has also allotted $0.25 million to fund up to five, $50,000 12-months Innovative Concepts Phase-I projects. The goal of this area is to solicit unique approaches to address fossil energy-related issues that represent ''out-of-the-box'' thinking and not simply incremental improvements to accelerate solutions to energy and environmental problems. Like the Core Program Area, single and joint applications are invited, however, no additional funding is provided for team applications. Unlike the Core Program, student participation in the IC Phase-I proposed research is strongly encouraged, however, not required.

Innovative research in the coal conversion and utilization areas will be required if coal is to continue to play a dominant role in the generation of electric power. Technical topics like the ones identified below are potential examples of research areas of interest, however, the areas identified were not intended to be all-encompassing. Therefore, it is specifically emphasized that other subjects for coal research would receive the same evaluation and consideration for support as the examples cited in the following Innovative Concepts Phase-I Technical Topics:

Mercury and Other Trace Emissions in Advanced Power Systems—Attractive features of Advanced Power Systems include the ability to accommodate a wide variety of fuel and waste feedstocks and converting the hydrocarbon-based input to simple nonhazardous byproducts. Gasification Systems, in addition, can produce consistent high-quality synthesis gas products that can be used as a building block for chemical manufacturing processes. Laboratory measurements and development of sampling techniques for mercury in reduced gasification conditions, provide first steps to understanding partitioning and removal of mercury and other trace matter in such environments. A recent study indicated that gasification could convert hazardous materials to nonhazardous gases and ashes, and as such justifies a separate treatment relative to incineration in the context of environmental protection and economics.

Grant applications are sought to further understand partioning and removal of mercury and other trace metal and organic substances in Advanced Systems and possible effects due to hot-gas cleanup devices on such trace matter. Objectives of understanding processes involving mercury and other trace matter must intend to ultimately help in minimizing and controlling trace emissions.

Thermodynamic Measurements for Mixtures of Asymmetric Hydrocarbons—Knowledge of the thermodynamics and phase behavior of mixtures of short-chain and long-chain (*i.e.,* those C_{20} and higher) alkanes is central to the understanding and comprehensive modeling of three-phase, Fischer-Tropsch (F–T) reactors. Subsequent process operations and reactor performance is strongly dependent on the composition of the wax phase, whose composition is constrained by the vapor-liquid equilibrium (VLE) that exists in the reactor. Knowledge of such vapor-liquid equilibrium values is also necessary for an understanding of retrograde condensation for examining wax precipitation in natural gas reservoir pipelines and many applications in petroleum processing, such as propane deasphalting.

Thermodynamic models (*i.e.,* equations of state) developed for hydrocarbon mixtures, and used for years, are poor predictors of VLE data when the mixtures contain alkanes longer than C_{20}. Attempts to circumvent this problem by use of equations of state developed for polymer-solvent systems have also been inadequate for modeling these asymmetric mixtures of hydrocarbons. Clearly, there is a need for a generalized thermodynamic model that can be applied to these systems.

Grant applications are desired for measurement of vapor-liquid equilibria for mixtures of light and heavy hydrocarbons, under appropriate conditions of temperature and pressure, so as to provide the basis for a comprehensive equation-of-state that would address such mixtures and their applications to hydrocarbon processing.

Carbon Sequestration—The potential effects of increasing atmospheric CO_2 levels are of major worldwide concern. If left unabated, increasing anthropogenic CO_2 emissions are expected to double atmospheric CO_2 levels by the middle of the century. One alternative for managing CO_2 emissions, which maintains the many benefits of coal-fired power, is carbon sequestration: the capture and secure storage of CO_2 before it is emitted to the atmosphere. However, major challenges must be overcome before suitable carbon sequestration technologies can be developed. These technologies must be environmentally benign, economically viable, safe and effective. They must also provide permanent containment to avoid creating negative

environmental legacies for future generations.

Carbon dioxide sequestration as a carbonate mineral (CO_2 mineral sequestration) is an attractive candidate technology, as it can provide permanent, environmentally benign CO_2 disposal. The carbonates produced (*e.g.,* $MgCO_3$ and $CaCO_3$) already exist in vast quantities in nature and have proven stable over geological time. The major challenge is economically viable process development. Novel methods that address the cost concerns of CO_2 mineral sequestration need to be studied.

Grant applications are sought to investigate key aspects of CO_2 mineral sequestration process development. Methods that have the potential to substantially reduce worldwide CO_2 emissions are of particular interest. Considerations of interest to reduce overall process cost include, but are not limited to, (i) improving process efficiency, *e.g.,* reaction rates and conditions, (ii) use of inexpensive feedstock materials, and (iii) the generation of marketable process products. Emphasis should be placed on approaches that are technically, economically, and environmentally feasible.

UCR Innovative Concepts Phase-II Program

The Innovative Concepts Phase-II Program is the principal R&D effort under the IC Program. DOE has budgeted $600,000 to fund three, three-year $200,000 projects. The goal of the IC Phase-II Program is to solicit additional research in areas previously included in the Phase-I Program. Phase-II awards are expected to be made during fiscal year 2001 to institutions with approaches that offer sufficient promising from Phase-I efforts. Consequently, only winners of a one-year Phase I grant awarded in FY99 will be considered eligible for a phase II grant. It is anticipated that at least 2–3 institutions submitting an application with approaches that appear sufficiently promising from the Phase-I efforts could receive a Phase-II award in 2001. Similar to the Core Program, student participation is required throughout the duration of the grant.

Issued in Morgantown, WV on November 30, 2000.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–31597 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice Inviting Financial Assistance Applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation, DE-PS26–01NT41092, and award financial assistance (Cooperative Agreements) for the program entitled ''Energy Efficient Building Equipment and Envelop Technologies, Round III.'' Through this solicitation, the DOE/NETL seeks applications on behalf of the Office of Building Technology, State and Community Programs in DOE's Office of Energy Efficiency and Renewable Energy (EERE) for innovative technologies that have the potential for significant energy savings in residential and commercial buildings. DOE is seeking to support projects that are advancing energy efficient equipment, envelope and whole building technologies. Specifically, the objective of the solicitation is to accelerate high-payoff technologies that, because of their risk, are unlikely to be developed in a timely manner without a partnership between industry and the Federal government.

DATES: The Program Solicitation will be available on the NETL Web site on or about December 15, 2000. Prospective offerors who would like to be notified as soon as the solicitation is available should register at *http://www.netl.doe.gov/business/index.html.* Provide your e-mail address and click on the heading ''Energy Efficiency and Renewable Energy.'' Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public.

ADDRESSES: The Program Solicitation, along with all amendments, will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business/solicit.* Applicants are therefore encouraged to periodically check this NETL address to ascertain the status of these documents. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

FOR FURTHER INFORMATION CONTACT: John R. Columbia, MS: 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: columbia@netl.doe.gov, Telephone Number: (412) 386–6144.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select a group of projects programmatically balanced with respect to : (1) Technology category (equipment end uses, envelopes and whole buildings); (2) building type (residential and/or commercial); and (3) time of commercialization (short-term or long-term market potential of the technology). The solicitation will cover research and development on materials, components and systems applicable to both residential and commercial buildings. The solicitation will not support demonstration projects to deploy the technology on a large scale but will support proof of concept projects. The research and development areas of interest are as follows: Building Equipment—energy conversion and control equipment supplying lighting, space conditioning (heating, cooling, dehumidification and ventilation), water heating, refrigeration, and appliance services to building occupants and commercial operations; Building Envelope—materials, components and systems for windows, walls, roofs, foundations and other elements which comprise building exteriors and provide thermal integrity and daylighting; and Whole Building Technologies—the integration of components and systems which govern overall energy use and indoor environmental quality in a building.

The solicitation covers research in four technology maturation stages. Technology Maturation Stage 2 involves applied research; Technology Maturation Stage 3 involves exploratory development (non-specific applications and bench-scale testing); Technology Maturation Stage 4 involves advanced development (specific applications and bench-scale testing); and Maturation Stage 5 involves engineering development (pilot-scale and/or field testing). For projects spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Multiple awards are expected regardless of the technology maturation stage(s) proposed.

It is DOE's desire to encourage the widest participation, including the involvement of small business concerns and small disadvantaged business concerns. In order to gain the necessary expertise to review applications, non-Federal personnel may be used as evaluators or advisors in the evaluation

of applications, but will not serve as members of the technical evaluation team. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost share commitment of at least 20 percent from non-Federal sources for research and development projects. Not all of the necessary funds are currently available for this solicitation; the Government's obligation under any cooperative agreement awarded is contingent upon the availability of appropriated FY2002 and FY2003 funds.

Issued in Pittsburgh, PA on November 30, 2000.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 00–31596 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting Correction

AGENCY: Department of Energy.

ACTION: Notice of open meeting correction.

On November 28, 2000, the Department of Energy published a notice of open meeting announcing a meeting of the Secretary of Energy Advisory Board in Washington, DC (65 FR 70890). In that notice, the meeting was scheduled for Thursday, December 14, 2000, 10:00 a.m.–2:00 p.m., at the U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Today's notice announces that, due to scheduling conflicts, the noticed meeting will be conducted as an open teleconference meeting. The open teleconference meeting will be conducted during the previously announced time period, 10:00 a.m.–2:00 p.m. Eastern Standard Time. Public participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

Issued at Washington, DC, on December 7, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–31711 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–162–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2001.

Algonquin states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, Algonquin states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) A GRI volumetric surcharge of 0.70¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to small customers qualifying for service under Algonquin's Rate Schedules AFT–1S and AFT–ES; (3) a reservation surcharge of 9.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.,* greater than 50% load factor; and (4) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.,* less than or equal to 50% load factor.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31558 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–152–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective January 1, 2001:

Twenty-Ninth Revised Sheet No. 17

ANR states that the purpose of this filing is to establish the revised Gas Research Institute surcharges approved in the Commission's September 19, 2000 unpublished letter order at Docket No. RP00–313–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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 in 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). Comments and protests may

be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31549 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–166–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheets, to be effective January 1, 2001:

Fifteenth Revised Sheet No. 570
Second Revised Sheet No. 573

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's May 15, 1996 Order granting ANR's request for suspension of the tariff pricing provision of Rate Schedule X–64 in the captioned proceeding. The revised tariff sheets reflect a continuance of the suspension of ANR's tariff provisions regarding the requirement to annually redetermine the monthly charge for services provided to High Island Offshore System under ANR's Rate Schedule X–64.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31562 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–140–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 2000:

Forty-fifth Revised Sheet No. 8
Forty-fifth Revised Sheet No. 9
Forty-fourth Revised Sheet No. 13
Fifty-fourth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.2 million of above-market costs that are associated with its obligations to Dakota Gasification Company (''Dakota''). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR also advises that the proposed changes would increase current quarterly Above-Market Dakota Cost recoveries from $2,023,299 to $2,211,370.

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 202–208–222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31575 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX01–1–000]

California Independent System Operator Corporation; Notice of Filing

December 6, 2000.

Take notice that on December 1, 2000, the California Independent System Operator Corporation (the ISO) applied in the above-numbered docket for an order, under Section 211 of the Federal Power Act (FPA), 16 U.S.C. 824j, compelling San Diego Gas & Electric Company (SDG&E) to perform those transmission services that are necessary to fulfill the terms of the Transmission Control Agreement between SDG&E and the ISO, the Transmission Owners tariff, and the ISO Tariff. The ISO submits the application as agent for all users of SDG&E's transmission system eligible to apply under Section 211. SDG&E's concurrence is submitted with the application.

The application states that SDG&E transmission and distribution system have been financed, in part with certain ''Local Furnishing Bonds,'' the interest on which is tax-exempt under Section 142 of the Internal Revenue Code. According to the application, Section 142 requires that SDG&E system be operated for the benefit of customers within its service territory, and operation of the system deemed by the Internal Revenue Service (the IRS) to be inconsistent with that requirement would, as a general rule, disqualify all of the currently outstanding Local Furnishing Bonds. The application further states, however, that, under Section 142(f), if disqualifying transmission services are provided pursuant to a Commission order issued under Section 211, only the bonds that financed the portion of the system used to provide such services, rather than all of the bonds that financed the local

furnishing system, cease to be eligible for tax-exempt treatment. SDG&E has advised the ISO that SDG&E local furnishing debt currently includes approximately $168 million relating to its transmission facilities and $518 million relating to its distribution facilities.

SDG&E has requested a ruling from the IRS that neither the execution and implementation of the Transmission Control Agreement nor the implementation, on January 1, 2001, of a state-wide transmission Access Charge under tariffs accepted for filing in Docket No. ER00–2019 conflicts with the local furnishing requirements. To assure, however, that, if a favorable ruling on either request is not forthcoming, at least the $518 million in bonds relating to SDG&E distribution system will remain tax-exempt, the application seeks an order, effective with the effective date of the Transmission Control Agreement, directing SDG&E to perform the stated transmission services. Anticipating that a statewide transmission Access Charge will take effect on January 1, 2001, the application requests that such an order issue prior to that date. SDG&E waives its right to a prior request and to a proposed order.

The ISO states that this filing has been served upon SDG&E, the Public Utilities Commission of the State of California, and the California Electricity Oversight Board.

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 and protests should be filed on or before December 15, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31569 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–142–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 6, 2000.

Take notice that, on November 30, 2000, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Nineteenth Revised Sheet No. 11A, with an effective date of January 1, 2001.

CIG states that the tariff sheet reflects an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.71% to 0.78% effective January 1, 2001.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell/htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31577 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–160–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2001:

Forty-sixth Revised Sheet No. 25
Forty-sixth Revised Sheet No. 26
Forty-sixth Revised Sheet No. 27
Forty-second Revised Sheet No. 28

Columbia states that this filing is being submitted in accordance with the Federal Energy Regulatory Commission's (Commission) order issued on September 19, 2000 in Gas Research Institute's (GRI) Docket No. RP00–313–000 (Order Approving Settlement) and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff. Columbia is submitting revised tariff sheets to reflect the GRI 2001 funding mechanism.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31556 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–163–000]

Dominion Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of the January 1, 2001:

Fourth Revised Sheet No. 31
Fourth Revised Sheet No. 32

DTI states that the purpose of this filing is to adopt the GRI surcharges established by Article II, Sections 1.2 through 1.5 of the January 21, 1998 ''Stipulation and Agreement Concerning GRI Funding, '' as approved by the Commission in Docket Nos. RP97–149–003, *et al.* (''GRI Settlement''). DTI further states that the rates established by its filing correspond to those set forth in Appendix A to the GRI Settlement; the unit rate impact on DTI's GRI Adjustment Charge for each affected rate schedule is summarized in DTI's transmittal letter.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31559 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–167–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2001:

First Revised Sheet No. 1076
First Revised Sheet No. 1097
First Revised Sheet No. 2303
First Revised Sheet No. 2304
First Revised Sheet No. 2504

DTI states that the purpose of the filing is to implement revised Appalachian Aggregation Points under the General Terms and Conditions of DTI's Tariff contained in Section 11. E. and related tariff sheets. The current five Appalachian Aggregation Points will be reduced to the following two: Appalachian Pooling North Point (receipts north of Valley Gate in Pennsylvania) and Appalachian Pooling South Point (receipts south of Valley Gate in Pennsylvania including all receipts in West Virginia).

DTI states that the proposed changes will be beneficial to both the Appalachian Pooling customers as well as to DTI's administration of the Appalachian Pools. Other tariff sheets changes are necessary to change the names of the Appalachian Aggregation Points to conform to the new names of the two points.

DTI states that copies of its filing have been served upon DTI's customers and interested state commissions.

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, N.E., Washington, D.C. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31563 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–39–000]

Duke Energy McClain, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

December 6, 2000.

Take notice that on December 1, 2000, Duke Energy McClain, (Duke McClain) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke McClain is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in McClain County, Oklahoma. The eligible facilities will consist of an approximately 550 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before December 27, 2000, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31573 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–145–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000 East Tennessee Natural Gas Company (East Tennessee) submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Nineteenth Revised Sheet No. 4, to become effective January 1, 2001.

East Tennessee states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, East Tennessee states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.70¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to small customers qualifying for service under East Tennessee's Rate Schedule FT–GS; (3) a reservation surcharge of 9.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.,* greater than 50% load factor; and (4) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.,* less than or equal to 50% load factor.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31580 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–147–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to become effective January 1, 2001:

Fourth Revised Sheet No. 5
Sixth Revised Sheet No. 6
Third Revised Sheet No. 10

Equitrans states that the purpose of this filing is to comply with the ''Order Approving the Gas Research Institute's 2001 Research, Development and Demonstration Program and 2001–2005 Five Year Plan'' issued on September 19, 2000 in Docket No. RP00–313–000. The Commission authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 2001 GRI unit surcharge approved by the Commission is (1) $0.0900 per dekatherm (Dth) per month demand surcharge fro high load factor customers, (2) $0.0550 per Dth per month demand surcharge for low load factor customers and (3) $0.0070 per Dth commodity/usage surcharge.

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, N.E., Washington, D.C. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31544 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–43–000]

Equitrans, L.P.; Notice of Application

December 6, 2000.

The notice that on December 1, 2000, Equitrans, L.P. (Equitrans). 100 Allegheny Center Mall, Pittsburgh, Pennsylvania, filed in Docket No. CP01–43–000 an abbreviated application pursuant to Section 7 of the Natural Gas

Act (NGA) and the Commission's Rules and Regulations for a limited term certificate of public convenience and necessity authorizing Equitrans to install and operate one 1,340 horsepower leased compressor unit and related facilities for a limited period beginning January 1, 2001, and ending April 1, 2001, in order to provide an additional 12,000 Mcf per day to be transported between Sleepy Hollow Compressing Station (Sleepy Hollow) and the Pennview Compressing Station (Pennview), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Equitrans states that Sleepy Hollow falls within Texas Eastern Zone M–2. Pennview is in Texas Eastern's Zone M–3. Although the distance is only approximately 24 miles, this is an area of constrained capacity. The ability to take gas from Texas Eastern just west of Sleepy Hollow and redeliver that gas east of Pennview will help alleviate a capacity bottleneck this winter. Equitrans further states that the capacity to be created by this application is fully subscribed, and that the revenue to be received by Equitrans is significantly more than the cost of installing the temporary compression, and therefore Equitrans' existing customers will not subsidize the proposed service, consistent with the Commission's policy statement. Equitrans also avers that if approval is granted for the proposed increase in capacity, the operating pressure of Equitrans' H–156 line will, under no circumstances, exceed the established maximum allowable operating pressure (MAOP) of 1150 psig. for the existing pipeline. Sufficient overpressure protection has been installed in accordance with 49 CFR Part 192 in order to maintain the integrity of the pipeline system.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 18, 2000, file with the Federal Energy Regulatory Commission, 888 first Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157 10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceedings can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provide by the project. Therefore, if a person has comments on community and landowner impacts from this proposal it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–31571 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–155–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, the following tariff sheets, to become effective January 1, 2001:

Third Revised Sheet No. 4
First Revised Sheet No. 85
First Revised Sheet No. 85A

The proposed changes provide for generic types of discounts that may be agreed to by KMIGT and a shipper.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31552 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–159–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on November 30, 2000, Midwestern Gas Pipeline Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twelfth Revised Sheet No. 5. Midwestern requests an effective date of January 1, 2001.

Midwestern states that Twelfth Revised Sheet No. 5 is being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.*, and approved by the Commission on April 29, 1998 (the GRI Settlement), Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998), an the Commission's Letter Order approving the Gas Research Institute's Year 2001 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2000 in Docket No. RP00–313. Midwestern further states that the revised tariff sheets revise the Gas Research Institute surcharges for 2001.

Any person desiring to be head 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 and 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://ww.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31555 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–172–000]

Mojave Pipeline Company; Notice of Rate Filing

December 6, 2000.

Take notice that on December 1, 2000, Mojave Pipeline Company (Mojave), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2001:

Fifth Revised Sheet No. 11
First Revised Sheet No. 103
First Revised Sheet No. 104

Mojave states that the tariff sheets re-establish its transportation rates as part of a general system-wide rate case.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31568 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–150–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifteenth Revised Sheet No. 8, with a proposed effective date of January 1, 2001.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31547 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–154–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Thirtieth Revised Sheet No. 9 and Fourth Revised Sheet No. 43, with a proposed effective date of January 1, 2001.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, *et al.,* National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) The changes in the FG reservation determinants based on the FG throughput for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Sections 2 and 3 Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of-Service based on the maximum IG rate in effect each month during the prior 12 ended October 31 times the IG throughput for the same period. The recalculation produced an FG rate of $7.7127 per dth.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31551 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–146–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective January 1, 2001:

14th Revised Sheet No. 8
29th Revised Sheet No. 9
5th Revised Sheet No. 10
4th Revised Sheet No. 11

National asserts that the purpose of this filing is to reflect the year 2001 Gas Research Institute (GRI) unit surcharges approved by the Commission on April 29, 1998, at Docket No. RP97–149–003, *et al.*

National states that the proposed tariff sheets reflect demand/reservation surcharges of 09.0 cents and 05.5 cents per Dth for ''high load factor and low load factor'' customers respectively, and a commodity/usage surcharge of .70 cents on firm services.

National further states that copies of this filing are being were served upon National's customers and interested State Commissions.

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, N.E., Washington, D.C. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31581 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–168–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2001:

Eighteenth Revised Sheet Number 156
Seventeenth Revised Sheet Number 157

Northern Border proposes to increase the Maximum Rate from 4,038 cents per 100 Dekatherm-Miles to 4.083 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 1.625 cents per 100 Dekatherm-Miles to 2.450 cents per 100 Dekatherm-Miles. The Maximum Rate reflects Northern Border's rate case at Docket No. RP99–322–000, which was suspended by the Commission in its order dated June 30, 1999 that became effective December 1, 1999. Thus, a portion of this Maximum Rate will be billed subject to refund. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(1)(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31564 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–169–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 1, 2001:

50 Revised Sheet No. 50
50 Revised Sheet No. 51
46 Revised Sheet No. 53
4 Revised Sheet No. 56

Northern states that this filing establishes the System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 2001 for the period January 1 through December 31, 2001.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31565 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–143–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective January 1, 2001:

Fifth Revised Volume No. 1

53 Revised Sheet No. 50
54 Revised Sheet No. 51
22 Revised Sheet No. 52
51 Revised Sheet No. 53
3 Revised Sheet No. 56

Original Volume No. 2

163 Revised Sheet No. 1C
39 Revised Sheet No. 1C.a

Northern states that the purpose of this filing is to set forth the approved 2001 Gas Research Institute (GRI) surcharges for the 2001 calendar year to be effective January 1, 2001 in accordance with the Commission's Order Approving The Gas Research Institute's Year 2001 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2000 in Docket No. RP00–313–000.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31578 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–165–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective January 1, 2001:

Third Revised Volume No. 1

Twentieth Revised Sheet No. 5
Sixteenth Revised Sheet No. 5–A
Second Revised Sheet No. 5–B
Original Sheet No. 5–C
Eleventh Revised Sheet No. 7
Fourteenth Revised Sheet No. 8
Eleventh Revised Sheet No. 8.1
Fifth Revised Sheet No. 232–D

Original Volume No. 2

Twenty-Ninth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to revise its tariff (1) to change Northwest's daily reservation/demand rates to reflect 365 days a year beginning in January, 2001; (2) to reformat the Statement of Rates shown on current Sheet Nos. 5 through 8.1; and (3) to change the daily price survey references associated with penalties for failure to comply with an operational flow order (OFO).

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31561 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–148–000]

Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

Fifty-Ninth Revised Sheet No. 4
Fifty-Ninth Revised Sheet No. 5
Fifty-Ninth Revised Sheet No. 6
Sixty-Second Revised Sheet No. 7
Sixty-Second Revised Sheet No. 8
Thirty-Eighth Revised Sheet No. 15
Third Revised Sheet No. 17

Panhandle states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order reh'g, 83 FERC ¶ 61,331 (1998) and the Commission's Letter Order dated September 19, 2000 in surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a reservation surcharge of 9.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.,* greater than 50% load factor; (2) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.70¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services: and (4) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Panhandle's Rate Schedule SCT.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31545 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–153–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Filing

December 6, 2000.

Take notice that on December 1, 2000, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twenty-fifth Revised Sheet No. 5. GTN requests that the above-referenced tariff sheet become effective January 1, 2001.

GTN asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' These tariff changes reflect that GTN's fuel and line loss surcharge percentage will increase to 0.0012% per Dth per pipeline-mile for the six-month period beginning January 1, 2001. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 00–31550 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–144–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Thirtieth Revised Sheet No. 4, Sixteenth Revised Sheet No. 4A, and Twenty-sixth Revised Sheet No. 5. GTN requests that the above-referenced tariff sheets become effective January 1, 2001.

GTN asserts that the purpose of this filing is to request an increase in the current maximum fuel and line loss percentage from 0.0041% per Dth per pipeline mile to 0.0050% per Dth per pipeline mile. GTN states that this change is intended to facilitate GTN's timely recovery of fuel and line losses, and limit reliance on GTN's fuel and line loss surcharge percentage, which is used to true up out of period fuel use and line loss amounts.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31579 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–149–000]

Questar Pipeline Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2001:

First Revised Volume No. 1

Nineteenth Revised Sheet No. 5

Original Volume No. 3

Twenty-Eighth Revised Sheet No. 8

Quester states that the tendered tariff sheets show a revised Fuel Gas Reimbursement Percentage (FGRP) of 0.8%, replace the currently effective 1.4% for tracking fuel-use and lost and unaccounted-for gas. The difference of −0.6% is to reflect the decrease in fuel, lost and unaccounted-for gas from the current FGRP rate of 1.4% to 1.3% for the prospective 12 months ending December 31, 2001, as well as a −0.5% amortization for over recovered fuel collected in the 12 month period ended September 30, 2000.

Further, Questar states that the revised FGRP is filed pursuant to Section 12.14 of the General Terms and Conditions of Part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary

[FR Doc. 00–31546 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–38–000]

SEI Michigan, L.L.C.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

December 6, 2000.

Take notice that on December 1, 2000, SEI Michigan, L.L.C. (SEI Michigan), 1155 Perimeter Center West, Atlanta, Georgia 30338, 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.

SEI Michigan is a Delaware limited liability company that intends to construct own, and operate a 298 MW generation facility at a site in Zeeland, Michigan. SEI Michigan is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before December 27, 2000, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31572 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–151–000]

Tennesee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 6, 2000.

Take notice that on December 1, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing (1) a revised accounting of Tennessee's take-or-pay transition costs and (2) a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the revised accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on June 1, 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 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 13, 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. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31548 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–161–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on November 30, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed on Appendix A to the filing, with an effective date of January 1, 2001.

Tennessee states that the revised tariff sheets are being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.,* and approved by the Commission on April 29, 1998 (the GRI Settlement), Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998), and the Commission's Letter Order approving the Gas Research Institute's Year 2001 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2000 in Docket No. RP00–313. Tennessee further states that the revised tariff sheets revise the Gas Research Institute surcharges for 2001.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31557 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–157–000]

Texas Eastern Transmission Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2001.

Texas Eastern states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, Texas Eastern states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) A GRI volumetric surcharge of 0.70 cents per dekatherm will be charged on a all non-discounted firm commodity and interruptible transportation services; (2) a 1.1 cents per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Texas Eastern's Rate Schedule SCT; (3) a reservation surcharge of 9.0 cents per dekatherm per month will be charged

on non-discounted firm high load factor customers, *i.e.,* greater than 50% load factor; and (4) a reservation surcharge of 5.5 cents per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.,* less than or equal to 50% load factor.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http:///www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31554 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–38–000]

Trans-Union Interstate Pipeline, L.P.; Notice of Application

December 6, 2000.

On November 22, 2000, Trans-Union Interstate Pipeline, L.P. (Trans-Union), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, filed in Docket No. CP01–38–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations for a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations so that Trans-Union may construct, operate, and abandon certain facilities and to perform other routine activities permitted by that subpart, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Questions regarding the details of this proposed project should be directed to Ned Hengerer of John & Hengerer, at (202)–429–8811.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 27, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. Also, non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.20001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–31570 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–171–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Transcontential Gas Pipe Line Corporation tendered for filing certain new and revised pro forma tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1.

Transco states that the purpose of the instant filing is to revise its tariff to reflect new customer services and business practices that will be available on 1Linesm, a new, state of the art, internet-based, service delivery computer system that will replace Transco's current computer system. As is described more fully herein, Transco's proposed tariff modifications relate specifically to the following areas:

Offering Operational Balancing Agreements at wellhead receipt points and processing plants on the Transco system;

Revising imbalance resolution provisions to establish Operational Impact Areas, implementing imbalance netting and trading, modifying the existing cash out mechanism and offering Best Available Operational Data;

Establishing Operational Controls to address adverse operational conditions which impact flexibility prior to issuing an OFO and tariff provisions to address unauthorized takes and trespass gas;

Modifying the Nomination, Confirmation, and Predetermined Allocation methodologies used to determine the daily allocations and, if necessary, capacity reductions, at receipt and delivery points;

Formalizing the pooling services by adopting a new Rate Schedule POOLING and a Form of Service Agreement for pooling service; and

Modifying and formalizing certain pipeline business practices including

those relating to capacity release, scheduling equality, liquefiable hydrocarbons processing, billing and payment, as well as other operational and business practices on the Transco system.

Transco states that its proposed pro forma tariff revisions are consistent with Commission policy.

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/oneline/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31567 Filed 12–11–00 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–141–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to be effective January 1, 2001.

First Revised Third Revised Sheet No. 18

Transwestern states that the purpose of this filing is to modify the Right of First Refusal (ROFR) provisions of Transwestern's tariff to permit Transwestern to grant contractual ROFR rights on a not-unduly discriminatory basis to shippers that do not automatically qualify for such a right.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31576 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–156–000]

Trunkline Gas Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

Thirty-Fifth Revised Sheet No. 6
Thirty-Fourth Revised Sheet No. 7
Thirty-Fifth Revised Sheet No. 8
Thirty-Fifth Revised Sheet No. 9
Seventeenth Revised Sheet No. 9A
Seventh Revised Sheet No. 9B
Thirty-Fourth Revised Sheet No. 10
Twentieth Revised Sheet No. 10A

Trunkline states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998) and the Commission's Letter Order dated September 19, 2000 in Docket No. RP00–313–000. Specifically, Trunkline's filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) A reservation surcharge of 9.0¢ per dekatherm per month will be charged on a non-discounted firm high load factor customers, *i.e.,* greater than 50% load factor; (2) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on a non-discounted firm low load factor customers, *i.e.,* less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.70¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Trunkline's Rate Schedule SST.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31553 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–164–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective January 1, 2001:

Third Revised Sheet No. 6B

Williams states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 2000.

Williams states that copies of this filling have been seen on all of Williams' jurisdictional customers and interested state commissions.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31560 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–170–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2001.

Williston Basin states the proposed tariff sheets are being filed to incorporate the Gas Technology Institute (GTI) General Research, Development and Demonstration Funding Unit Adjustment provision for 2001, and to change all references to the Gas Research Institute or GRI in the Rate Sheets, Rate Schedules, General Terms and Conditions and Forms of Service Agreements of Williston Basin's Tariff to the Gas Technology Institute or GTI.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31566 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 6, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–3052–003.

c. *Date Filed:* August 27, 1999.

d. *Applicant:* City of Black River Falls, Wisconsin.

e. *Name of Project:* Black River Falls Hydroelectric Project.

f. *Location:* On the Black River in the City of Black River Falls, Jackson County, Wisconsin. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Loren Radcliffe, Administrator, Black River Falls Municipal Utilities, 119 North Water Street, Black River Falls, Wisconsin 54615.

i. *FERC Contact:* Susan B. O'Brien, *susan.obrien@ferc.fed.us,* (202) 219–2840.

j. *Deadline for filing motions comments, recommendations, terms and conditions, and prescriptions:* February 10, 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. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that

may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted, and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing run-of-river project consists of: (1) 103-foot-long concrete gravity nonoverflow dam with the crest elevation of 773.0 feet; (2) 221-foot-long Taintor gate spillway; (3) 83-foot-long flashboard spillway with 12-inch-high flashboards; (4) nonoverflow concrete wall forming the left side of the powerhouse forebay; (5) headworks consisting of six head gates, a forebay, and the powerhouse intake; (6) powerhouse with a total installed capacity of 920 kilowatts, producing about 4.4 gigawatthours annually; (7) nonoverflow concrete gravity section extending from the headworks to the west retaining wall; (8) concrete retaining wall; (9) 198-acre reservoir with a total storage capacity of 1,980 acre-feet; (10) transmission lines; and (11) other appurtenances.

m. *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. The application 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.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David Boergers,

Secretary.

[FR Doc. 00–31574 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–4]

Prevention of Significant Deterioration of Air Quality (PSD) Applicability Determination.

AGENCY: Environmental Protection Agency.

ACTION: Notice of applicability determination.

SUMMARY: This notice announces that on May 23, 2000, the Environmental Protection Agency (EPA) Region 5, issued an applicability determination for Detroit Edison Company's Monroe Power Plant pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) requirements under the Clean Air Act (Act) and regulations codified at 40 CFR 52.21.

DATES: Region 5 initially issued the above determination on May 23, 2000. The Administrator affirmed the determination on August 30, 2000.

FOR FURTHER INFORMATION CONTACT: Laura Hartman, Environmental Engineer, Permits and Grants Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5703, *hartman.laura@epa.gov.*

Anyone who wishes to review this determination and related materials can obtain this determination at *http://www.epa.gov/region5/air/permits/permits.htm or http://www.epa.gov/region07/programs/artd/air/nsr/nsrpg.htm.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Action is EPA Taking?
B. What did EPA Determine?

A. What Action Is EPA Taking?

We are notifying the public that EPA has made a provisional determination regarding the applicability of the PSD regulations to the proposed replacement and reconfiguration of the high pressure section of two steam turbines at Detroit Edison's Monroe Power Plant, referred to as the Dense Pack project. Specifically, Detroit Edison Company requested EPA to determine: (1) Whether the Dense Pack project is a routine or non-routine change under the PSD regulations, and (2) if the project is not routine, whether it will require a PSD permit.

B. What Did EPA Determine?

Considering the nature, extent, purpose, frequency, and cost of the work, as well as other relevant factors, EPA found that the proposed Dense Pack project would not be routine maintenance, repair, and replacement. Consequently, EPA determined that the project would not be exempt from the PSD program on that basis.

However, the Dense Pack project must undergo PSD review only if the project would result in a significant net emissions increase of regulated pollutants. Under the applicable PSD regulatory provisions commonly known as the ''WEPCO rule'', *see* 57 FR 32314 (July 21, 1992), in determining if a physical change will result in a significant emissions increase at an electric utility plant, a company may use an ''actual'' to ''representative actual annual emissions'' test for emissions from the electric utility steam generating unit. Under this test, the company must calculate baseline emissions and project future emissions after the change. Because EPA has no information to dispute Detroit Edison's contention that actual emissions will not significantly increase at the modified units as a result of the Dense Pack project, and as long as the State permitting agency concurs with Detroit Edison's projection that emissions will not increase as a result of the project, Detroit Edison may proceed at any time with the project without first obtaining a PSD permit. EPA's determination is provisional because Detroit Edison has not provided a calculation of baseline emissions or projected future emissions to the State permitting agency for evaluation as is called for under the WEPCO rule. The company should do so before starting construction.

If, after the project is completed and the affected units resume regular operation, data reflecting actual emissions show a significant emissions increase resulting from the project, PSD would apply at that time.

C. How May Interested Parties Seek Judicial Review of this Action?

Interested parties with standing may seek judicial review of this decision under Section 307(b)(1) of the Act *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate regional circuit within 60 days from the date on which this notice is published in the **Federal Register**. Under Section 307(b)(2) of the Act, this determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: November 21, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–31617 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–3]

National Advisory Council for Environmental Policy and Technology, (NACEPT) Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT standing committee on compliance assistance meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Standing Committee on compliance assistance will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below. NACEPT Standing Committee on Compliance Assistance; January 10th & 11th, 2001. Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the NACEPT Standing Committee on Compliance Assistance on Wednesday, January 10, 2001 from 8:30 a.m. to 5 p.m., and January 11, 2001 from 8:30 a.m. to 4:45 p.m.. The meeting will be held at the Washington Monarch Hotel, 2401 M. St. NW, Washington, DC 20037. The agenda for both days of the meeting will be focused primarily on the workgroup discussion of strategic compliance assistance (CA) policy issues, including integrating CA into the Agency's mission, CA measurement and CA priority setting. A formal agenda will be available at the meeting.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies.

Over the last two years, EPA has undertaken a number of actions to improve out Compliance Assistance activities. To ensure that the Agency efforts to improve compliance assistance are implemented in a way that continues to reflect stakeholder needs, the National Advisory Council on Environmental Policy and Technology (NACEPT) created a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the Agency can continue to receive valuable stakeholder advice and recommendations on compliance assistance activities.

For further information concerning the NACEPT Standing Committee on Compliance Assistance, including the upcoming meeting, contact Joanne Berman, Designated Federal Officer (DFO), on (202) 564–7064, or E-mail: berman.joanne@epa.gov.

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting.

Dated: December 4, 2000.

Joanne Berman,

Designated Federal Officer.

[FR Doc. 00–31616 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34223B; FRL–6756–7]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for the organophosphate pesticide malathion. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34223B, must be received by EPA on or before February 12, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34223B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8068; e-mail address: overstreet.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on malathion, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially 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**.

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document and other related documents 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/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person*. The Agency has established an official record for this action under docket control number OPP–34223B. 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 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 Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to This Action?

A. 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 OPP–34223B in the subject line on the first page of your response.

1. *By mail*. Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described 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 computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34223B. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

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**.

IV. What Action Is EPA Taking in This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, malathion. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA–USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the malathion preliminary risk assessments, which where released to the public through a notice in the **Federal Register** on May 11, 1999, 65 FR 30407, (FRL–6558–3).

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for malathion. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific malathion use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre–harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non–-target organisms. EPA will provide other opportunities for public participation

and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before February 12, 2001, at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 7, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–31696 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6915–7]

Strategy for Research on Environmental Risks to Children

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Office of Research and Development (ORD), is today announcing the availability of a final document, Strategy for Research on Environmental Risks to Children, EPA 600/R–00/068, dated October 2000. ORD has prepared the Strategy for Research on Environmental Risks to Children to strengthen the scientific foundation of the EPA risk assessments and risk management decisions that affect children. ORD strategies provide a framework of research needs and priorities to guide its programs over the next five to ten years. They form the basis for more detailed research plans, which in turn link to individual ORD laboratory implementation plans. The strategy includes a program of research in hazard identification, dose-response and exposure assessment, and risk reduction, as well as problem-oriented research that addresses current critical needs identified by EPA Program Offices and Regions.

ADDRESSES: A limited number of copies of the Strategy for Research on Environmental Risks to Children are available from the National Service Center for Environmental Publications.

Request a copy by telephoning 1–800–490–9198 or 513–489–8190 and providing the title and the EPA number for the document, EPA 600/R–00/068. Internet users may obtain a copy from the EPA's Office of Research and Development home page. The URL is http://www.epa.gov/ORD.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Hammerstrom, National Center for Environmental Assessment (8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–3258; facsimile: 202–565–0065; E-mail: hammerstrom.karen@epa.gov.

SUPPLEMENTARY INFORMATION: The Strategy for Research on Environmental Risks to Children focuses on six objectives: (1) To establish direction for a long-term, stable core research program in children's environmental health that leads to sustained risk reduction through more accurate, scientifically based risk assessments for children, (2) to identify research to answer the key questions about children's environmental health risks and increase our understanding of when and why children respond differently from adults to environmental agents, (3) to identify research that will help to reduce children's risks, (4) to provide a research agenda that identifies priorities for the ORD intramural and extramural programs, (5) to inform EPA scientists, risk assessors, and risk managers of the research related to children at EPA and other Federal agencies, and (6) to provide guiding principles for implementation.

To meet these objectives, the strategy describes a research program with short-term and long-term goals in the following areas:

- Data to reduce uncertainties in risk assessment through mode of action research, epidemiology and clinical studies, exposure field studies, and activity pattern and exposure factor studies
- Risk assessment methods and models for children, including dose-response and exposure models
- Experimental methods for studying mechanisms of action in children
- Risk reduction in children's indoor environments
- Methods of communicating risks to children and reduction of risk through parental and community actions

The strategy provides the framework for a program that continues well into the future. The success of the program will depend on a number of factors, not the least of which is engagement and partnership with key stakeholders. In addition to EPA's Program Offices and Regions, these key stakeholders include industry; States, Tribes, and local communities; Federal organizations including the National Institute of Environmental Health Sciences, the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry; and the international community.

Dated: December 6, 2000.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–31619 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–6]

Carrier Air Conditioning Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the Carrier Corporation pursuant to 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the Carrier Air Conditioning Company Superfund Site located in Collierville, Shelby County, Tennessee. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: November 20, 2000.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–31618 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51959; FRL–6759–7]

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 October 30, 2000 to November 10, 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. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

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–51959 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), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (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,'' ''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/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51959. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the manufacturer/importer 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–51959 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, 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–51959 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 October 30, 2000 to November 10, 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 and TMEs

This status report identifies 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. 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. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

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.

TABLE I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 10/30/00 TO 11/10/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0078	10/30/00	01/28/01	CBI	(G) Glass fiber coating	(G) Urethane acrylate oligomer
P–01–0079	10/30/00	01/28/01	CIBA Specialty Chem.Corp., Colors Division	(G) Textile dye	(G) Benzoic acid, 3,5-diamino-2-[(1,5-disulfo-2-naphthalenyl)azo]-4,6-bis[[4-(substituted)phenyl]azo]-, sodium salt
P–01–0080	10/31/00	01/29/01	Lambent Technologies Corp.	(S) Wetting agent - coatings	(S) Poly(oxy-1,2-ethanediyl), α-(2-carboxybenzoyl)-omega-[3-[1,3,3,3-tetramethyl-1-[(trimethylsily-l)oxy]disiloxanyl]propoxy]-, potassium salt
P–01–0081	10/31/00	01/29/01	Lambent Technologies Corp.	(S) Wetting agent - coatings	(S) Poly(oxy-1,2-ethanediyl), α-(2-carboxybenzoyl)-omega-(2-propenyloxy)-, potassium salt
P–01–0082	10/31/00	01/29/01	Lambent Technologies Corp.	(S) Wetting agent - coatings	(S) Poly(oxy-1,2-ethanediyl), α-(2-carboxybenzoyl)-omega-[(2-carboxybenzoyl)oxy]-, dipotassium salt
P–01–0083	10/31/00	01/29/01	CBI	(G) Coating component	(G) Tris carbamoyl triazine
P–01–0084	11/01/00	01/30/01	CBI	(S) Plasticizer for plastics	(G) 1,2,4,5-benzenetetracarboxylic acid, tetrakis esters with monohydric alcohols
P–01–0085	11/02/00	01/31/01	CBI	(G) Component of adhesives, inks, and clear coatings	(G) Mono esters from 2-propenoic acid
P–01–0086	11/02/00	01/31/01	Huntsman Petrochemical Corporation	(G) Chemical intermediate - destructive use	(G) Alkanolamine
P–01–0087	11/02/00	01/31/01	Atofina Chemicals, Inc.	(G) Free radical initiator for polymers	(G) Polyether poly-t-butyl peroxycarbonate
P–01–0088	11/02/00	01/31/01	Rhodia, Inc.	(S) Component in surfactant/foaming agent for leather processing	(S) Sulfuric acid, mono-c_{9-11}-alkyl esters, sodium salts
P–01–0089	11/03/00	02/01/01	CBI	(G) Acrylic pressure sensitive adhesive	(G) Vinyl pyrrolidone-acrylate copolymer
P–01–0090	11/03/00	02/01/01	Dainippon ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–01–0091	11/03/00	02/01/01	Dainippon ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–01–0092	11/06/00	02/04/01	Degussa-huls Corporation	(S) Sizing component for fiber glass	(S) 2-propanol, reaction products with (3-chloropropyl)trimethoxysilane and diethylenetriamine-ethylenimine polymer

TABLE I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 10/30/00 TO 11/10/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0093	11/06/00	02/04/01	Rhodia, Inc./formerly albright & wilson	(S) Viscosity index improver for hydraulic and gear oils;viscosity index improvers for shock absorber fluids and other special hydraulics;pour point depressants for hydraulic and gear oils	(S) 2-propenoic acid, 2-methyl-, c_{6-18}-alkyl esters, polymers with me methacrylate
P–01–0094	11/07/00	02/05/01	CBI	(G) Resin coating	(G) Polyester resin
P–01–0095	11/09/00	02/07/01	3M Company	(G) Stain resistant coating	(G) Aliphatic urethane
P–01–0096	11/09/00	02/07/01	CBI	(G) Open.non dispersive use	(G) Modified acrylate polymer
P–01–0097	11/09/00	02/07/01	Sybron Chemical Inc.	(S) A crosslinker for waterborne paper coastings; a crosslinker for waterborne inks; a crosslinker for leather finishes; a crosslinker for waterborne wood coatings	(G) Polyaziridinyl ester
P–01–0103	11/06/00	02/04/01	Solutia Inc.	(S) Binder for industrial printing inks	(G) Phenolic resin modified rosin resin

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

TABLE II. 4 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 10/30/00 TO 11/10/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–01–0002	11/03/00	12/18/00	Ilford Imaging USA	(S) Dye for inkjet printer ink	(G) Copper complex with sulfonated azo dye, sodium salt
T–01–0003	11/09/00	12/24/00	Bystronic Inc.	(S) Photo-curing overprint varnish for paper, cardboard and plastic films roller coating	(G) Acrylic acid ester amino addition product
T–01–0004	11/09/00	12/24/00	Bystronic Inc.	(S) Photo-curing overprint varnish for paper, cardboard and plastic films roller coating	(G) Acrylic acid ester amino addition product
T–01–0005	11/09/00	12/24/00	Bystronic Inc.	(S) Photo-curing overprint varnish for paper, cardboard and plastic films roller coating	(G) Acrylic acid ester amino addition product

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE III. 38 NOTICES OF COMMENCEMENT FROM: 10/30/00 TO 11/10/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0080	11/09/00	10/13/00	(G) Polyphosphoric acids, compounds with melamine
P–00–0084	11/07/00	10/23/00	(G) Dimethyl ester of 2-2 oxo-1-(1,4-dihydro-2,3-dioxo-6-methoxy-quinoxaline-7-yl carbamoyl-propylazo)terephthalic acid
P–00–0534	11/09/00	10/12/00	(G) Copolymer of alkyl acrylates
P–00–0543	11/08/00	10/12/00	(S) Petanoic acid, 5,5′-dioxybis[5-oxo-]
P–00–0631	11/07/00	10/16/00	(G) Alkyl arylaminophenylcarboxylate
P–00–0657	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0658	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0659	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0660	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0732	11/08/00	10/09/00	(G) Silane
P–00–0765	11/01/00	10/04/00	(G) Alkylaryl polyether
P–00–0787	11/07/00	10/24/00	(S) Alkanes, c_{10-24}-branched
P–00–0788	11/07/00	10/11/10	(S) Alkanes, c_{10-24}
P–00–0838	11/03/00	10/17/00	(G) Substituted alkylsulfonamide
P–00–0871	10/30/00	10/07/00	(G) Reaction product of halogenated arylammonium salt, alkylaluminum and substituted carbomonocyclic metal compound
P–00–0880	11/06/00	10/25/00	(S) 1,2,3 propanetricarboxylic acid, 2-hydroxy-, bismuth(3+) salt (1:1)

TABLE III. 38 NOTICES OF COMMENCEMENT FROM: 10/30/00 TO 11/10/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0884	10/30/00	10/19/00	(G) Polyester polyether isocyanate polymer
P–00–0886	10/30/00	10/16/00	(G) Polyester polyether isocyanate polymer
P–00–0921	10/30/00	10/19/00	(G) Silane treated silica
P–00–0937	11/03/00	10/25/00	(G) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, polymer with 1,1'-methylenebis[4-isocyanatocyclohexane], and an aliphatic alcohol
P–00–0940	11/03/00	10/18/00	(G) Polyamide resin
P–00–0944	10/30/00	10/02/00	(G) Aqueous polyurethane
P–00–0994	11/01/00	10/13/00	(G) Amino substituted aromatic acid derivative
P–00–1004	11/08/00	10/16/00	(G) Polyester resin
P–00–1007	11/03/00	10/17/00	(G) Colored aliphatic urethane
P–00–1008	11/09/00	10/13/00	(G) Multifunctional polycarbodiimide
P–00–1049	11/08/00	10/19/00	(G) Polyester resin
P–00–1066	11/09/00	11/02/00	(G) Methacrylic acid copolymer
P–92–0539	11/07/00	10/27/00	(S) Polymer of fatty acids, c_{18}-unsatd., dimers; ethylenediamine; stearic acid; 1,5-pentanediamine, 2-methyl-;piperazine; polyoxypropylenediamines; sebacic acid
P–93–0939	10/30/00	10/03/00	(G) Cyclic - aliphatic polyester
P–99–0377	10/30/00	10/25/00	(G) Halogenated alkyldiene
P–99–0791	11/06/00	10/17/00	(G) Polyester polyol
P–99–0792	11/06/00	10/17/00	(G) Polyester polyol
P–99–0793	11/06/00	10/17/00	(G) Polyester polyol
P–99–0848	11/07/00	10/30/00	(G) Alkenyl carboxylate, metal salt
P–99–1064	11/08/00	10/25/00	(S) Cellulose, acetate hydrogen (2*z*)-2-butenedioate propanoate
P–99–1311	10/30/00	10/12/00	(G) Polyol
P–99–1379	11/06/00	08/30/00	(G) Polydimethyldiphenylsiloxane resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 29, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–31620 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, December 14, 2000, at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

The following items have been added to the agenda: Dole/Kemp '96, Inc.—Statement of Reasons (LRA #506); Response to October 19, 2000 open meeting regarding Dole-Kemp '96, Inc.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–31745 Filed 12–8–00; 2:51 pm]

BILLING CODE 6775–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Partially Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of partially open meeting.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: January 25–27, 2001.

Place: Building J, Room 236, National Emergency Training Center, Emmitsburg, Maryland.

TIME: January 25, 2001, 8:30 a.m.–10:30 a.m. (Closed Meeting), January 25, 2001, 10:30 a.m.–5 p.m. (Open Meeting), January 26, 2001, 8:30 a.m.–9 p.m. (Open Meeting), January 27, 2001, 8:30 a.m.–12 noon (Open Meeting).

Proposed Agenda: January 25, (Closed Meeting from 8:30 a.m.–10:30 a.m., to review Fiscal Year 2001 budgetary and procurement information.) January 25–27, Review U.S. Fire Administration Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public (except as noted above) with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 19, 2001.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Chief Operating Officer, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: November 29, 2000.

Kenneth O. Burris, Jr.,

Chief Operating Officer.

[FR Doc. 00–31514 Filed 12–11–00; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Deposit Bancshares, Inc., Douglasville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Douglas Federal Bank, Douglasville, Georgia, upon its conversion from a federal savings bank to a chartered commercial bank.

Board of Governors of the Federal Reserve System, December 6, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31498 Filed 12–11–00; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

Proposed Collection; Comment Request Entitled GSA Board of Contract Appeals Rules Procedure

AGENCY: GSA Board of Contract Appeals (GSBCA), GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB Clearance (3090–0221).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning GSA Board of Contract Appeals Rules Procedure. This information collection was published in the **Federal Register** at 65 FR 58088, on September 27, 2000 allowing for the standard 60-day public comment period. No comments were received.

DATES: Comment Due Date: January 11, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to: Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals (202) 501–0272.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, and cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 55; *annual responses:* 55; *average hours per response:* .20; *burden hours:* 6.4.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: December 4, 2000.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 00–31515 Filed 12–11–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Request for public comment on a proposed template of genetic test information for use by health professionals.

SUMMARY: The Secretary's Advisory Committee on Genetic Testing (SACGT) was chartered to advise the Department of Health and Human Services on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. SACGT recently completed its first report, Enhancing the Oversight of Genetic Tests (available at *http://www4.od.nih.gov/oba/sacgt.htm*). SACGT stated in the report's overarching principles that genetics education of health professionals and the public about the appropriate use, interpretation, and understanding of genetic test results is critical to the successful implementation of genetic testing into health care.

To inform and educate health professionals on genetic testing and their appropriate uses, SACGT is developing a template of essential information elements about genetic tests. A SACGT working group, composed of SACGT members and ad hoc experts, identified seven key data elements about a genetic test that may be valuable to health professionals considering using a genetic test for patient care. At its November 2–3, 2000 meeting, SACGT reviewed the proposed genetic test information template and recommended public comment be solicited. After consideration of public comments, SACGT's final draft of the template will be submitted to the Assistant Secretary of Health for transmittal to the Secretary of Health and Human Services.

DATES: The public is encouraged to provide written comments on the proposed genetic test information template by January 31, 2001. The following mailing address should be used: SACGT, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 103, Bethesda, Maryland, 20892. SACGT's facsimile number is 301–496–9839. Comments can also be sent via e-mail to *hagas@od.nih.gov.* All public comments received will be available for public inspection at the SACGT office between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION: Questions about this request for public comment can be directed to Dr. Susanne Haga, by e-mail (*hagas@od.nih.gov.*) or telephone (301–496–9838). The proposed template will also be posted on SACGT's website for review and comment.

SUPPLEMENTARY INFORMATION: Decades of genetics research have brought about many important medical and public health advances. The pace of discovery

in this area has enabled scientists to make rapid progress in understanding the role of genetics in many common yet complex diseases and conditions, such as heart disease, cancer, and diabetes. It also has increased knowledge that may lead to the development of new tests to identify these disease conditions in individuals, sometimes before symptoms occur. According to GeneTests, a genetic testing laboratory directory, genetic testing is clinically available for more than 400 diseases or conditions in more than 200 laboratories in the United States, and investigators are exploring the development of tests for an additional 338 diseases or conditions. However, most of the current genetic testing is for single gene disorders such as Huntington disease and cystic fibrosis.

Genetic tests can be performed for a number of purposes. Moreover, a test can be used in more than one way, such as when a test used for diagnostic purposes is also used to predict risk of disease. SACGT included the following types of testing within its definition: (1) An analysis performed on human DNA, RNA, genes, and/or chromosomes to detect heritable or acquired genotypes, mutations, phenotypes, or karyotypes that cause or are likely to cause a specific disease or condition; and (2) the analysis of human proteins and certain metabolites, which are predominantly used to detect heritable or acquired genotypes, mutations, or phenotypes. The purposes of both these types of genetic tests include directing clinical management, screening of newborns, predicting risks of disease, identifying carriers, and establishing prenatal or clinical diagnoses or prognoses in individuals, families, or populations. Not included in this definition are tests that are used primarily for other purposes, but that may contribute to diagnosing a genetic disease (*e.g.,* blood smear, certain serum chemistries), and tests conducted exclusively for forensic identification purposes.

In the past, many tests were developed to detect or confirm rare genetic diseases. More recently, tests have been developed to detect mutations that may be involved in or contribute to more common, complex conditions (such as breast, ovarian, and colon cancer and cardiovascular disease), the effects of which generally do not appear until later in life. Optimally, these tests are used to predict a person's predisposition to disease where there is a family history of the disease, and, in general, such tests are not recommended for individuals without such a history. However, in the future, the use of predictive tests may expand and be offered to individuals without a family history of certain diseases and conditions, e.g., common adult-onset disorders.

Proposed Template of Genetic Test Information

Due to the wide range of genetic tests, their multiple uses and complexities, and the rapidity with which they are being developed and introduced into clinical practice, health professionals should be knowledgeable about the basic elements of a genetic test to ensure their appropriate use. A SACGT working group developed a template of seven key essential data elements about genetic tests that could serve as a framework for an informational fact sheet. This fact sheet would be analogous to reference books or fact sheets describing intended uses, risks, and benefits of drugs for health professionals. Fact sheets for genetic tests could help encourage important information exchanges between health professionals who order genetic tests and laboratorians who provide the testing services. Information that is known about a genetic test in these seven areas should be included or referenced on the fact sheet. Equally important, when data are not available for a given element, the absence of such data should be specifically noted. It will also be important for the fact sheets to be updated periodically to reflect new scientific or clinical data. If the Food and Drug Administration (FDA) or other oversight bodies become involved in the review of genetic tests prior to clinical introduction, the approved claims of the test should be stated as well.

The seven elements relate to the following areas: purpose of the test; clinical condition for which the test is performed; definition of the test; analytical validity, clinical validity, and clinical utility of the test; cost of the test and billing/reimbursement information. The seven elements are described in detail below along with the proposed sources for each element.

A. *Purpose of the Test.* SACGT proposes that the purpose of the test and the appropriate settings for offering the test should be clearly described. Examples of categories of test purposes could include predictive, carrier, prenatal, preimplantation, newborn, and diagnostic testing. Each category of test use represents a different test, even when the laboratory measurement(s) are the same. Therefore, all appropriate categories should be clearly described.

SACGT suggests that the laboratory providing the testing services should define the proper use of the test. Peer-reviewed literature as well as the laboratory's own data should be used to substantiate the appropriateness of the intended use(s) of a test. In addition, relevant clinical, professional, and health policy communities and government agencies should contribute to defining the appropriate uses of genetic tests through the development of practice standards and guidance documents.

B. *Clinical Condition for Which Test is Performed.* SACGT recommends that the clinical condition for which the test is to be performed be described. The prevalence or incidence of the disease or condition, its clinical manifestations, and prognosis to the extent known should be included in the description of the clinical condition. The testing laboratory should cite the clinical condition as part of its description of the intended use(s) of the test. Peer-reviewed literature should be referenced as appropriate. In addition, relevant clinical, professional, and health policy communities and government agencies should contribute to describing clinical manifestations, prevalence, and prognosis as appropriate.

C. *Definition of Test.* SACGT proposes that the specific laboratory measurement(s) of the test, *e.g.,* specific mutation, metabolite, enzyme activity, be described in the information template for health professionals. The description should be written in a language that would be understandable to non-laboratorians. A description of what the test measures may also assist health professionals in interpreting the results.

D. *Analytical Validity.* SACGT recommends that information regarding the analytical validity of a test be provided in the information template to health professionals. SACGT believes that a genetic test should demonstrate analytical validity before the test is used for clinical purposes. Analytical validity is defined as the ability of a test to measure or detect the analyte it is intended to measure or detect. An analyte is defined as the substance measured by a laboratory test, *e.g.,* DNA—mutation, allele, or chromosome, metabolites, or enzyme activity. Analytical validity includes analytical sensitivity (the probability that a test will detect an analyte when it is present in the sample) and analytical specificity (the probability that a test will be negative when an analyte is absent from a sample). Health professionals as well as patients should know whether a test can accurately detect the presence or absence of its intended target.

SACGT proposes that the laboratory providing the testing services supply specific information related to its assay.

As with other elements, peer-reviewed literature may be referenced to substantiate claims of test performance.

E. *Clinical Validity.* SACGT proposes that information on the clinical validity of a test be provided to health professionals. SACGT defines clinical validity as the accuracy with which a laboratory measurement predicts the presence or absence of a clinical condition. For diagnostic, prenatal, and carrier tests, accuracy could be expressed as clinical sensitivity (the probability a person with the disease, or who will get the disease, will have a positive result), clinical specificity (the probability that a test will be negative in a person who does not have or will not get the disease), positive predictive value (the probability that a person with a positive result has, or will get, the disease), and negative predictive value (the probability that a person with a negative test result does not have, or will not get, the disease). For predictive tests, SACGT proposes to define accuracy as the prediction of expressivity (the range of phenotypes associated with positive and negative test results) and age-related penetrance (likelihood of disease at a given age in test-positive individuals). In addition, health professionals should be made aware of other factors, such as environment or lifestyle, that may influence the development or prognosis of a disease or condition in an individual with a positive test result, as they may assist in their clinical management approaches.

SACGT suggests that the testing laboratory should define clinical validity as relevant to the proposed uses of the test. Peer-reviewed literature as well as the laboratory's own data should be used to substantiate the claims of clinical validity of the test. Information about the clinical validity should include, as necessary, a statement about the limitations of the available data. For example, if a test has been evaluated in only high-risk families, the absence of population-based data should be noted. More detailed consideration of clinical validity through research studies and clinical experience may contribute to the development of practice standards over time by the professional, medical, and health policy communities.

F. *Clinical Utility.* SACGT proposes that information relating to the clinical utility of a test be provided to health professionals. SACGT defines clinical utility as the contribution of the test result to improved outcome in the person tested. Clinical utility usually reflects the efficacy of clinical interventions for persons with positive test results. However, even when no interventions are available to treat or prevent the disease or condition, there may be other benefits associated with the knowledge of positive or negative test results.

If a clinical intervention is available for individuals who test positive for the disease or condition, this information should be provided to health professionals, along with the level of evidence regarding its efficacy. Other potential benefits associated with the knowledge of test results should also be described.

SACGT has not identified a specific source that would be responsible for providing information related to clinical utility. References to peer-reviewed literature or contact information for professional or patient advocacy organizations in the relevant field could be listed. Health professionals should also be active in investigating possible clinical interventions or preventive strategies. In-depth consideration of clinical utility through research studies and clinical experience will contribute to the development of practice standards and guidelines over time by professional medical and health policy communities and patient and disease advocacy organizations.

G. *Cost of Test and Billing/Reimbursement Information.* SACGT suggests that the testing laboratory provide information to health professionals on the cost of the test. At present, some genetic tests are very expensive, though, as technology advances and the use of these tests increases, it is expected that costs will decrease. If possible, the laboratory could also provide any information on billing and reimbursement policies for the test. For example, the laboratory may indicate which CPT codes should be used for billing purposes. In addition, since patients may wish to pay for the test directly due to concerns related to the confidentiality and privacy of test results, information on direct payments should be included. SACGT recognizes that laboratories may have limited information regarding reimbursement policies since these are variable and often decided over time by third-party payors. Many health insurers provide information on their reimbursement policies via their web-site or customer information services.

Questions on Which Comment Is Being Solicited

1. Do the proposed elements sufficiently address the relevant information that should be made available to health professionals about a genetic test? Are there other elements that should be added to the template? If so, please define the element and propose a specific source for the element.

2. Are the proposed sources of information appropriate for each element?

3. Who should provide information regarding the clinical utility of a genetic test?

4. Would this information template be useful to you? If so, how?

5. How would this information best be disseminated to health professionals?

6.If FDA becomes involved in the oversight of genetic tests, much of the content of the proposed fact sheets will be considered during FDA's review process. In the interim, what other review mechanisms should be considered to ensure the accuracy of the material provided in the information sheets?

Dated: December 6, 2000.

Sarah Carr,

Executive Secretary, Secretary's Advisory Committee on Genetic Testing.

[FR Doc. 00–31523 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1642]

Agency Information Collection Activities; Proposed Collection; Comment Request; Establishment Registration and Listing Requirements for Human Cells, Tissues, and Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for human tissue intended for transplantation.

DATES: Submit written or electronic comments on the collection of information by February 12, 2001.

ADDRESSES: Submit electronic comments on the collection of

information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Establishment Registration and Listing of Requirements for Human Cellular and Tissue-Based Products—21 CFR Part 1270 (OMB Control Number 0910–0372)—Extension

Under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264), FDA issued regulations to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, hepatitis C, and other organisms causing infectious disease through the use of human tissue for transplantation. The regulations in part 1271 (21 CFR part 1271) require establishments that recover, process, store, label, package, or distribute any human cell, tissue, and cellular and tissue-based product (HCT/P), or that perform donor screening or testing, to submit an initial establishment registration and HCT/P list to FDA. Subsequently, establishments must submit an annual update to their establishment registration. In addition, establishments are required to submit HCT/P list updates, if any, and amendments whenever an establishment changes ownership or locations. FDA provides a registration and listing form (Form FDA 3356) to facilitate the ease and speed of submissions.

Sections 1271.10(b) and 1271.21(a) and (b) require the initial establishment registration and HCT/P listing information. Sections 1271.10(b) and 1271.21(b) require the annual establishment registration by domestic and foreign HCT/P establishments that are solely regulated under section 361 of the PHS Act and this part. Sections 1271.10(b), 1271.21(c)(ii), and 1271.25(c) require domestic and foreign HCT/P establishments to submit HCT/P listing updates only when an HCT/P is changed, added, or discontinued, and when there has been a material change to information submitted previously to the agency. If no change has occurred since the previous submission, an update is not required. Sections 1271.10(b) and 1271.26 require domestic and foreign HCT/P establishments to submit an amendment, but only when the establishment makes a change in location or ownership.

Sections 207.20, 207.26, 207.30, 807.20, 807.26, and 807.30 (21 CFR 207.20, 207.26, 207.30, 807.20, 807.26, and 807.30) already require establishments that manufacture drug or device products to submit initial establishment registration and product listing, as well as annual establishment registration, product listing updates, and location and ownership amendments. Sections 207.20(f) and 807.20(d) require that manufacturers of HCT/P drugs and devices submit this registration and listing information using Form FDA 3356 instead of the multiple forms identified under parts 207 and 807 (21 CFR parts 207 and 807). Therefore, these establishments will incur only a one-time burden to transition from the use of several forms to the use of one form.

Respondents to this information collection are establishments that recover, process, store, label, package, or distribute any human cells, tissue, and cellular and tissue-based product. Based on information provided to FDA by industry representatives, trade organizations, and professional societies, the estimated number of establishments 1,225 (i.e., approximately 110 conventional tissue, 114 eye tissue banks, 400 peripheral blood stem cells, 25 stem cell products from cord blood, 400 reproductive tissue, 110 sperm banks, and 66 licensed biological products and approved devices). Our burden estimates for the annual frequency per response and average hours per response are based on institutional experience with comparable reporting provisions for drugs, including biological products, and devices, information from industry representatives and trade organizations, and data provided by the Eastern Research Group, a consulting firm hired by FDA to prepare an economic analysis of the potential economic impact on sperm banks and other reproductive tissue facilities.

Table 1 of this document provides the initial, one-time estimated burden for HCT/P establishment registration and HCT/P listing. This information may be submitted simultaneously on the same form, Form FDA 3356. We estimate that 0.75 hour of staff time will be needed for each initial submission.

In table 1 of this document we also include the one-time burden for HCT/P drug and device manufacturers regulated under parts 207 and 807. Parts 207 and 807 require that drug and device manufacturers submit initial establishment registration and product listing, annual establishment registration, product listing updates, and location/ownership amendments. Sections 207.20(f) and 807.20(d) change only the reporting format and require use of only one form, new Form FDA 3356, in place of the multiple forms currently required, i.e., Forms FDA–2656 and FDA–2657 for drug manufacturers, and Forms FDA–2891, FDA–2891(a), and FDA–2892 for device manufacturers. Therefore, the one-time reporting burden estimate for §§ 207.20(f) and 807.20(d) in table 1 of this document reflects only the time necessary to transition from the use of current multiple forms to the use of Form FDA 3356.

Table 2 of this document provides the estimate of the ongoing annual reporting burden for establishment registration. In

addition, table 2 of this document sets out estimated reporting burdens for HCT/P listing updates and establishment location or ownership amendments that would occur during any given year. If there is no change to an HCT/P listing, establishment location or ownership, a submission is not required. It is estimated that ongoing annual registration, updates and amendments require 0.50 hour, while the initial submission requires on average 0.75 hour. In addition, table 2 of this document shows that the average hours per response is 0.25 hour for the HCT/P listing updates and location/ownership amendments, which are required only when a change is made. In table 2 of this document, we also estimate that approximately 5 percent of the 1,159 establishments, or 58 establishments, will make changes to HCT/P's, location, or ownership in any one year after the initial registration and listing.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED INITIAL (ONE-TIME) REPORTING BURDEN[1]

21 CFR Section	Form FDA 3356	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
207.20(f)		1	1	1	0.5	0.5
807.20(f)		65	1	65	0.5	32.5
1271.10(b) and 1271.25(a) and (b)	Inital registration and listing	1,159	1	1,159	0.75	869.25
Total						902.25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA 3356	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1271.10(b) and 1271.21(b)	Annual registration	1,159	1	1,159	0.5	579.5
1271.10(b), 1271.21(c), and 1271.25(c)	Listing update	58	1	58	0.5	29
1271.10(b) and 1271.26	Location/ownership amendment	58	1	58	0.25	14.5
Total						623

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31592 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1353]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 2000 (65 FR 41674), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0116. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31588 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1303]

Agency Information Collection Activities; Announcement of OMB Approval; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Agreement for Shipment of Devices for Sterilization'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 2000 (65 FR 55634), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0131. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31590 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1328]

Agency Information Collection Activities; Announcement of OMB Approval; Latex Condoms; User Labeling; Expiration Dating

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Latex Condoms; User Labeling; Expiration Dating'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 2000 (65 FR 57617), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0352. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31593 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1359]

Agency Information Collection Activities; Announcement of OMB Approval; Affirmation of Generally Recognized as Safe (GRAS) Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Affirmation of Generally Recognized as Safe (GRAS) Status'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the**Federal Register** of September 25, 2000 (65 FR 57616), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0132. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31594 Filed 12–11–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2001. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5496.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the

Federal Register and FDA implemented the recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Since the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA Advisory Committees' home page located at www.fda.gov/oc/advisory/default.htm. The FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2001. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

Committee Name	Dates of Meetings	Advisory Committee 5–Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	April 13 November 16	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	March 5 October 29	12388
Biological Response Modifiers Advisory Committee	January 18–19 April 5–6 July 12–13 October 25–26	12389
Blood Products Advisory Committee	March 15–16 July 26–27 September 20–21 December 13–14	19516
Transmissible Spongiform Encephalopathies Advisory Committee	January 18–19 June 28–29 October 25–26	12392
Vaccines and Related Biological Products Advisory Committee	January 30–31 March 8–9 May 16–17 September 13–14 November 28–29	12391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	April 23–24 August 13–14 October 29–30	12539
Advisory Committee for Reproductive Health Drugs	June 1	12537
Anesthetic and Life Support Drugs Advisory Committee	January 25–26 May 10–11 September 13–14	12529
Anti-Infective Drugs Advisory Committee	January 29–30	12530
Antiviral Drugs Advisory Committee	January 11 April 26–27 July 23–24 October 22–23 December 6–7	12531
Arthritis Advisory Committee	February 7–9 April 19–20 August 16–17 October 11–12 December 6–7	12532
Cardiovascular and Renal Drugs Advisory Committee	February 8–9 May 17–18 October 18–19	12533
Dermatologic and Ophthalmic Drugs Advisory Committee	February 5 June 5 August 14 September 18 December 9–10	12534
Drug Abuse Advisory Committee	No meetings are planned	12535
Endocrinologic and Metabolic Drugs Advisory Committee	February 22–23 April 26–27 July 26–27 September 20–21 November 8–9	12536
Gastrointestinal Drugs Advisory Committee	March 29–30	12538
Medical Imaging Drugs Advisory Committee	March 1 July 2	12540

Committee Name	Dates of Meetings	Advisory Committee 5–Digit Information Line Code
Nonprescription Drugs Advisory Committee	May 10–11	12541
Oncologic Drugs Advisory Committee	March 13–14 June 7–8	12542
Peripheral and Central Nervous System Drugs Advisory Committee	March 13–15	12543
Pharmacy Compounding Advisory Committee	March 29–30 June 28–29 September 13–14	12440
Psychopharmacologic Drugs Advisory Committee	February 14–15	12544
Pulmonary-Allergy Drugs Advisory Committee	January 18–19 April 26–27 September 6–7	12545
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	April 23–24 September 24–25	10564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No meetings are planned	12398
Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices Panel	June 14–15	12624
Circulatory System Devices Panel	February 5 April 2–3 June 25–26 September 10–11 December 3–4	12625
Clinical Chemistry and Clinical Toxicology Devices Panel	January 17 May 9 July 11 October 24–25 December 5–6	12514
Dental Products Panel	April 3–4 August 14–15 November 13–14	12518
Dispute Resolution Panel	Will meet as needed	10232
Ear, Nose, and Throat Devices Panel	February 22–23 June 11–12 October 11–12	12522
Gastroenterology-Urology Devices Panel	March 9 June 29 September 24–25 December 10–11	12523
General and Plastic Surgery Devices Panel	February 7 May 15–16 September 24–25 December 10–11	12519
General Hospital and Personal Use Devices Panel	February 12–13 May 17–18 August 2–3 November 1–2	12520
Hematology and Pathology Devices Panel	February 26 April 23 July 30 October 8	12515
Immunology Devices Panel	March 16 June 15 September 14 December 3	12516
Microbiology Devices Panel	March 8–9 July 19–20 October 25–26 December 6–7	12517
Molecular and Clinical Genetics Panel	March 9 June 8 September 7 December 7	10231
Neurological Devices Panel	February 8–9 May 17–18 November 15–16	12513
Obstetrics-Gynecology Devices Panel	January 29–30 April 30–May 1 July 16–17 October 15–16	12524

Committee Name	Dates of Meetings	Advisory Committee 5–Digit Information Line Code
Ophthalmic Devices Panel	March 15–16 May 17–18 July 19–20 September 20–21 November 29–30	12396
Orthopaedic and Rehabilitation Devices Panel	January 18–19 May 10–11 August 9–10 November 1–2	12521
Radiological Devices Panel	February 5 May 14 August 13 November 5	12526
National Mammography Quality Assurance Advisory Committee	April 23 September 10	12397
Technical Electronic Product Radiation Safety Standards Committee	May 16–17	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	February 20–21 September 12–13	12548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	December 6–7 May 10–11	12560
Science Board to the National Center for Toxicological Research	June 7–8	12559

Dated: December 5, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–31589 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–00–800]

Memorandum of Understanding Between the Food and Drug Administration and the Centers for Disease Control and Prevention

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Centers for Disease Control and Prevention. The purpose of the MOU is to provide a framework for coordination and collaborative efforts, and provide the principles and procedures by which information exchanges shall take place.

DATES: The agreement became effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ellen F. Morrison, Office of Regulatory Affairs (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5660.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

BILLING CODE 4160–01–F

FDA 225–00–8000

Memorandum of Understanding Between the Food and Drug Administration and theCenters for Disease Control and Prevention

I. Purpose

This Memorandum of Understanding (MOU) between the Food and Drug Administration(FDA) and the Centers for Disease Control and Prevention (CDC) provides a framework forcoordination and collaborative efforts between these two agencies which are both components ofthe Department of Health and Human Services. This MOU also provides the principles andprocedures by which information exchanges between FDA and CDC shall take place.

This memorandum supersedes the Memorandum of Understanding Between the Centers forDisease Control and the Food and Drug Administration, dated 4/1/82, regarding the exchange ofinformation and coordination of actions.

II. Background

FDA and CDC are sister agencies within the Department of Health and Human Services. Both FDA and CDC exist and work to protect the public health but have different statutory mandates and responsibilities.

FDA is a regulatory agency responsible for protecting the public health through the regulation of food, cosmetics, and medical products, including human drugs, biological products, animal drugs, and medical devices. FDA administers the Federal Food, Drug, and Cosmetic Act and relevant sections of the Public Health Service Act, among other statutes. Among its duties, FDA approves pre-market applications, conducts inspections of manufacturing facilities, and monitors post-marketing adverse events. FDA also initiates civil and criminal litigation to enforce applicable laws and regulations.

CDC is charged with protecting the public health by providing leadership and direction in the prevention and control of diseases and other preventable conditions and by responding to public health emergencies. CDC administers relevant sections of the Public Health Service Act, the Occupational Safety

and Health Act, the Clinical Laboratory Improvement Act, and the Federal Mine Safety and Health Act. CDC, among other activities, administers national programs for the prevention and control of communicable and vector-borne diseases, enforces quarantine regulations, and works to monitor and control disease outbreaks.

CDC's and FDA's respective missions to protect the public health may overlap in a variety of ways depending upon the subject matter. Each agency has a responsibility to work collaboratively to protect and improve public health. It may sometimes be the case that FDA or CDC will be in possession of information that could be useful to the other agency in that agency's performance of its responsibilities. Timely sharing of information between CDC and FDA is therefore critical to protecting the public health.

III. Substance of Agreement and Responsibilities of Each Agency

A. Coordination and Collaboration Relative to Public Health Activities

It is mutually agreed that:

1. Each agency will coordinate and collaborate with the other agency to protect and improve the public health. To achieve this, each agency will utilize the expertise, resources, and relationships of the other agency in order to increase its own capability and readiness to respond to emergency situations. In addition, each agency will designate central contact points where communications from the other agency, dealing with matters covered by this agreement, should be referred.
2. Each agency will participate in periodic joint meetings to promote better communication and understanding of regulations, policies, and statutory responsibilities, and to serve as a forum for questions and problems that may arise.
3. Each agency will notify the other agency as soon as possible when issues of mutual concern become evident.
4. Each agency will collaborate with the other agency in all investigations of mutual concern. Such collaboration may include providing alerts to the other agency regarding disease outbreaks encountered as part of its activities; providing technical advice in areas of recognized expertise;

providing results of analysis; making available expert witnesses; and exchanging information as described in section III B.

5. Each agency will consult with the other before issuing press or scientific releases or publications that may have a significant impact on the other agency.

6. Each agency will refer its proposed regulations, guidances, or recommendations that may have a significant impact on the other agency for review and comment by that agency before publication.

7. This agreement does not preclude CDC or FDA from entering into other agreements which may set forth procedures for special programs which can be handled more efficiently and expertly by other agreements.

B. Principles and Procedures for the Exchange of Information That is Not Publicly Available

FDA and CDC agree that the following principles and procedures will govern the exchange of nonpublic information between the two agencies.

Although there is no legal requirement that FDA and CDC exchange information in all cases, FDA and CDC agree that there should be a presumption in favor of full and free sharing of information between FDA and CDC. As sister public health agencies within the Department of Health and Human Services, there are no legal prohibitions that preclude FDA or CDC from sharing with each other most agency records in the possession of either agency. Both agencies recognize and acknowledge, however, that it is essential that any confidential information that is shared between FDA and CDC must be protected from unauthorized public disclosure.*See e.g.*, 21 U.S.C. 331(j); 18 U.S.C. 1905; 21 CFR parts 20 and 21;42 CFR parts 5 and 5b, and 42 U.S.C. 301(d). Safeguards are important to protect the interests of, among others, owners and submitters of trade secrets and confidential commercial information; patient identities and other personal privacy information; privileged and/or pre-decisional agency records; and information protected for national security reasons. Such safeguards also help guarantee FDA's and CDC's compliance with applicable laws and regulations.

To facilitate the sharing of information with each other, it is necessary that FDA and CDC implement procedures to ensure, at a minimum, that such sharing of information is indeed appropriate and that the recipient agency guards the confidentiality of all information received.[1] There are separate procedures, as described below, for routine requests for information and for emergency requests. It is incumbent upon both agencies to respond to requests for information in a timely manner. Any unauthorized disclosure of shared confidential information by the agency receiving the information shall be the responsibility of that agency.

1. Routine Requests for Information

a. The requesting agency must demonstrate, in writing, why it is necessary for it to obtain the requested information. This demonstration should consist of a summary that describes in detail the information requested (to facilitate identification of relevant records) and a brief statement of the purpose for which the information is needed. This request shall state which internal agency offices and/or individuals requested the information. A model request letter is attached.

b. The agency receiving the request for information shall, based upon the sufficiency of the need-to-know demonstration described in section III B 1a above, determine whether it is appropriate to share the requested information with the requesting agency. The need-to-know threshold is a low one. As stated above, there is a presumption in favor of information exchange between FDA and CDC. An agency should only decide not to share information in response to a request if it has credible information and a reasonable belief that the requesting agency may not be able to comply with applicable laws or regulations governing the protection of non-public information or with the principles or procedures set forth in this MOU. If an agency decides that it is not appropriate to share information with the requesting agency, it shall describe to the requesting agency the reasons for such decision.

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[1]It is assumed that each agency has implemented or will implement all data and information security requirements and has implemented or will implement, to the extent necessary and practicable, all data and information security recommendations.

c. The requesting agency agrees that it shall comply with the following conditions:

—The requesting agency shall limit the dissemination of shared information it receives to internal agency offices and/or individuals that have been identified in its written request and/or have a need-to-know. The agency official who signs the request letter will be responsible for ensuring that there are no other recipients of the information.

—The requesting agency shall agree in writing not to publicly disclose any shared information in any manner including publications and public meetings. If the requesting agency wishes to disclose shared information, including information that it believes is publicly releasable, it shall first request and obtain the written permission of the agency that has shared the information. If the requesting agency receives a Freedom of Information Act (FOIA) request for the shared information, it will refer the request to the information-sharing agency for it to respond directly to the requester regarding the releasability of the information. In such cases, the agency making the referral will notify the requester that a referral has been made and that a response will issue directly from the other agency.

—The agency that shares information with the requesting agency shall include a transmittal letter, along with any agency records exchanged. The transmittal letter shall indicate the type of information (e.g., confidential commercial information, personal privacy, or pre-decisional). A model transmittal letter is attached.

—The requesting agency shall promptly notify the appropriate office of the information-sharing agency when there is any attempt to obtain shared information by compulsory process, including but not limited to, a FOIA request, subpoena, discovery request, or litigation complaint or motion.

—The requesting agency shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that the agencies may determine the appropriate measures to take, including where appropriate the filing of a motion or an appeal with the court.

2. Emergency Requests for Confidential Information

In cases in which the requesting agency has a need to obtain certain information as soon as possible due to emergency circumstances, such as a foodborne illness outbreak, FDA and CDC may utilize the following procedures. These procedures are intended for use only in the case of an actual emergency situation and are not appropriate for routine requests for information.

a. The requesting agency shall indicate orally or in writing to the agency in possession of the relevant information that it has the need to obtain certain identifiable information as soon as possible due to the existence of emergency circumstances. The requesting agency shall also describe what the emergency circumstances are.

b. The requesting agency shall verbally agree to protect from unauthorized public disclosure any and all information that is shared, according to all applicable laws and regulations.

c. The existence of an actual emergency situation shall warrant, as determined by the agency in possession of the requested records, the waiver of the need-to-know demonstration and determination described above in section III B 1a and B 1b. However, once the requesting agency has obtained the information it seeks, it shall comply with those procedures set forth in section III B 1c above.

IV. Name and Address of Participating Parties

A. Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857

B. Centers for Disease Control and Prevention, Public Health Service, Department of Health and Human Services, Atlanta, GA 30333

V. Liaison Officers

A. For FDA: Associate Commissioner for Regulatory Affairs, Contact: Ellen F. Morrison, Deputy Director, Division of Emergency and Investigational Operations, Food and Drug Administration, 5600 Fishers Lane (HFC09130), Rockville, MD 20857, 301–827–5660

B. For CDC: Associate Director for Science, Atlanta, GA 30333

VI. Period of Agreement

This agreement becomes effective upon signature of both parties and will continue for three years It may be modified by mutual consent or terminated by either party upon 120 days written notice.

Attachments

Model Request Letter

Model Transmittal Letter

Approved and Accepted for the Centers for Disease Control and Prevention

By: Jeffrey P. Koplan, M.D., M.P.H.,

Director, Centers for Disease Control and Prevention

Date: June 26, 2000.

Approved and Accepted for the Food and Drug Administration

By: Jane E. Henney, M.D.

Commissioner of Food and Drugs.

Date: June 1, 2000.

Model Language for Request

The Centers for Disease Control and Prevention (CDC) has requested the following information from FDA for the following purposes: [Identify information and purpose]

or

CDC hereby requests the following information from FDA that it will use for the following purposes: [Identify information and purpose]

CDC agrees that it will not publicly disclose any such information that FDA shares with it without prior written permission from FDA and that it will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between CDC and FDA. Applicable laws and regulations prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C. 331(j); 18 U.S.C. 1905, 21 CFR parts 20 and21, 42 CFR parts 5 and 5b, and 42 U.S.C. 301(d).

CDC will limit dissemination of any shared information to the following CDC offices and/or employees: [Identify office(s) and/or employee(s)]

Name:_____

Date:_____

[Signature and Date by CDC official with requisite responsibility and authority.]

Model Language for Request

The Food and Drug Administration (FDA) has requested the following information from the Centers for Disease Control and Prevention (CDC) for the following purposes: [Identify information and purpose]

or

FDA hereby requests the following information from CDC for the following purposes: [Identify information and purpose]

FDA agrees that it will not publicly disclose any such information that CDC shares with it without prior written permission from CDC and that it will comply with the principles and procedures set forth

in the Memorandum of Understanding on information sharing between FDA and CDC. Applicable laws and regulations prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C. 331(j); 18 U.S.C. 1905, 21 CFR parts 20 and 21,42 CFR parts 5 and 5b, and 42 U.S.C. 301(d).

FDA will limit dissemination of any shared information to the following FDA offices and/or employees: [Identify office(s) and/or employee(s)]

Name:_____

Date:_____

[Signature and Date by FDA official with requisite responsibility and authority.]

[Model Transmittal letter from CDC to FDA]

This letter accompanies agency records that the Center for Disease Control and Prevention (CDC) is sharing with the Food and Drug Administration (FDA) in response to FDA's request, dated _____. These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[CDC checks applicable numbers below]

— trade secrets;

— confidential commercial or financial information;

— information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

— information subject to the Privacy Act;

— intra-agency records;

— records or information compiled for law enforcement purposes; or

— information protected for national security reasons.

FDA shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

FDA shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that FDA and/or CDC may take appropriate measures, including filing a motion with the court or an appeal.

FDA has agreed, by this letter or e-mail and by a signed request letter dated _____, not to publicly disclose the above-described information without prior written permission of CDC. FDA acknowledges that applicable laws and regulations may prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C.331(j); 18 U.S.C. 1905, 21 CFR parts 20 and 21, 42 CFR parts 5 and 5b, and 42 U.S.C. 301(d). FDA also agrees to comply with the principles and procedures set forth in the Memorandum ofUnderstanding between FDA and CDC, *cite*

[Model Transmittal letter from FDA to CDC]

This letter accompanies agency records that the Food and Drug Administration (FDA) is sharing with the Center for Disease Control and Prevention (CDC) in response to CDC's request, dated _____. These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[FDA checks applicable numbers below]

— trade secrets;

— confidential commercial or financial information;

— information the disclosure of which would constitute a clearly unwarranted invasion ofpersonal privacy;

— information subject to the Privacy Act;

— intra-agency records;

— records or information compiled for law enforcement purposes; or

— information protected for national security reasons.

CDC shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

CDC shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that the FDA and/or CDC may take appropriate measures including filing a motion with the court or an appeal.

CDC has agreed, by this letter or e-mail and by a signed request letter dated _____, not to publicly disclose the above-described information without prior written permission of FDA. CDC acknowledges that applicable laws and regulations may prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C.331(j); 18 U.S.C. 1905, and 21 CFR parts 20 and 21, 42 CFR parts 5 and 5b, and 42 U.S.C.301(d). CDC also agrees to comply with the principles and procedures set forth in the Memorandum of Understanding between FDA and CDC, *cite*.

[FR Doc. 00–31591 Filed 12–11–00; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; A Nested Case-Control Study of Lung Cancer and Diesel Exhaust Among Non-Metal Miners

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 26, 2000, page 24490, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title. A Nested Case-Control Study of Lung Cancer and Diesel Exhaust Among Non-Metal Miners. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This nested case-control study will examine lung cancer in non-metal miners and its association, if any, with diesel exhaust exposure. The study will involve approximately 160 deaths from lung cancer (the actual number will depend on the number of deaths occurring, but based on national rates we expect 160), and four controls matched to each death, identified from the cohort. Controls will be matched on miners, gender, race/ethnicity and year of birth (within 5 years). Detailed information regarding exposure to diesel exhaust will be obtained from employment records and measurements of diesel exhaust surrogates. Information on potential confounders will be obtained by interview and from environmental measurements. This information will be used in a study by the National Cancer Institute and the National Institute for Occupational Safety and Health to examine risk of mortality from lung cancer for various measures of diesel exhaust exposure, adjusted for smoking and other potential confounders. *Frequency of Response:* Single-time study. *Affected Public:* Individuals. *Type of Respondents:* Workers or next of kin of workers. The annual reporting burden is as follows: Estimated number of Respondents: 227; Estimated Number of Responses per Respondent: One; Average Burden Hours per Response: 1.0; and Estimated Total Annual Burden Hours Requested: 227. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this

notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management And Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Debra Silverman, NCI Project Director, National Cancer Institute, Executive Plaza South, Room 8108, Rockville, Maryland 20892–7240, or call non-toll-free number (301) 435–4716, or FAX your request to (301) 402–1819, or E-mail your request, including your address, to Silvermd@exhange.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before January 11, 2001.

Dated: December 1, 2000.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 00–31522 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Antibodies and Other Ligands Directed Against KIR2DL4 Receptor for Production of Interferon-Gamma

Eric Long, Sumati Rajagopalan (NIAID)
DHHS Reference No. E–255–00/0 filed 23 Oct 2000

Interferon-gamma is a potent antiviral and antimicrobial substance produced by natural killer (NK) white blood cells. NK cells are activated during infections by viruses and by other intracellular pathogens, such as parasites and bacteria. Soluble substances, such as interleukins, produced by infected cells activate NK cells to secrete interferon-gamma. Injection of interleukins into patients to stimulate NK cells to secrete interferon-gamma has not been a successful therapeutic approach because of the toxicity involved. The invention is based on the discovery by the inventors that activation of the KIR2DL4 receptor expressed by all NK cells stimulates them to produce interferon-gamma. The invention claims monoclonal antibodies and derivatives thereof, as well as natural and synthetic ligands of KIR2DL4 that can be utilized to stimulate interferon-gamma production by NK cells without any other stimulus. The possibility of inducing interferon-gamma production by NK cells without the toxic side effects of interleukins could be an effective therapy for various types of infections and of cancers. Also claimed in the invention are methods of treating various cancers and viral infections, methods of treating autoimmune disease, and methods of administration of the antibody or derivatives thereof.

Ixodes scapularis Tissue Factor Pathway Inhibitor

Ivo Francischetti, Jesus Valenzuela, Jose Ribeiro (NIAID)
DHHS Reference No. E–208–00/0 filed 05 Oct 2000

Ixodes scapularis is a blood-sucking tick and the principal vector of Lyme disease, a spirochetal illness caused by Borrelia burgdorferi and now the most common vector-borne infection in the United States; more than 50,000 cases have been reported during the last ten years. The salivary gland of I. scapularis has a number of pharmacologically active molecules that help the tick to successfully feed on blood, such as inhibitors of complement system, in addition to coagulation and platelet aggregation inhibitors. This invention describes Ixolaris, a protein that inhibits the initiation of blood coagulation by inhibition of components of the extrinsic pathway. Accordingly, Ixolaris blocks Factor X activation by Factor VIIa/TissueFactor, it attenuates Factor Xa production by the prothrombinase, and inhibits fibrin formation in a diluted prothrombin time. Ixolaris is highly specific since it does not inhibit other serine proteases. Because Ixolaris has anticoagulant properties, it could be used to ameliorate a number of clinical conditions such as disseminated intravascular coagulation, and hypercoagulation states. In addition, Ixolaris may be useful as a vaccine candidate for Lyme disease because inactivation of Ixolaris by antibodies may make transmission of Borrelia burgdorferi more difficult. In addition to the composition of Ixolaris, the invention claims vaccines utilizing Ixolaris, methods of stimulating an immune response, and methods of treatment of restenosis, arterial thrombosis, and stroke.

Ixodes Salivary Anticomplement Protein

Jose Ribeiro (NIAID), Jesus Valenzuela (NIAID), Rosane Charlab (NIAID), Thomas Mather (EM)
DHHS Reference No. E–207–00/0 filed 28 Sep 2000

This invention describes Isac, a novel anticomplement protein that can be isolated and purified from I. scapularis (tick) saliva that may be useful as a peptide vaccine against Lyme disease. Because inactivation of Isac by antibodies will make transmission of Borrelia burgdorferi to humans more difficult, Isac is an ideal candidate for a Lyme disease vaccine. Isac disrupts the alternative complement pathway by inhibiting factors Bb and/or C3b, preventing cell lysis and anaphylatoxin production. The inventors have found no similarity to any protein in GenBank for Isac. Isac may also be used in situations where alternative complement activation is implicated such as in rheumatoid conditions such as lupus erythematosus or juvenile arthritis. The invention is further described in Ribeiro et al., ''Purification, cloning, and expression of a novel salivary anticomplement protein from the tick, Ixodes scapularis,'' J Biol. Chem. 2000 Jun 23; 275(25):18717–23.

LL–37 Is an Immunostimulant

Oleg Chertov (NCI), Joost Oppenheim (NCI), De Yang (NCI), Qian Chen (NCI), Ji Wang (NCI), Mark Anderson (EM), Joseph Wooters (EM)
DHHS Reference No. E–285–00/0 filed 21 Sep 2000

This invention relates to use of an antimicrobial peptide as a vaccine adjuvant. LL–37 is the cleaved antimicrobial 37-residue C-terminal peptide of hCAP18, the only identified

member in humans of a family of proteins called cathelicidins. LL–37/hCAP18 is produced by neutrophils and various epithelial cells. LL–37 is well known as an antimicrobial peptide. However, although antimicrobial peptides have generally been considered to contribute to host innate antimicrobial defense, some of them may also contribute to adaptive immunity against microbial infection. The inventors have shown that LL–37 utilizes formyl peptide receptor-like 1 (FPLR1) as a receptor to activate human neutrophils, monocytes, and T cells. Since leukocytes participate in both innate and adaptive immunity, the fact that LL–37 can chemoattract human leukocytes may provide one additional mechanism by which LL–37 can contribute to host defense against microbial invasion, by participating in the recruitment of leukocytes to sites of infection. The invention claims methods of enhancing immune responses through the administration of LL–37 alone, in conjunction with a vaccine, and methods of treating autoimmune diseases. The invention is further described in Chertov *et al.,* ''LL–37, the neutrophil granule-and epithelial cell-derived cathelicidin, utilizes formyl peptide receptor-like 1 (FPRL1) as a receptor to chemoattract human peripheral blood neutrophils, monocytes, and T cells,'' J Exp. Med. 2000 Oct 2;192(7):1069–74.

A Method for Bioconjugation Using Diels-Alder Cycloaddition

Vince Pozsgay (NICHD)

DHHS Reference No. E–126–00/0 filed 09 Aug 2000

This invention relates to a new method for the synthesis of conjugate vaccines using the Diels-Alder cycloaddition reaction to covalently attach a carbohydrate antigen from a pathogen to a protein carrier. The Diels-Alder reaction has not been extended to conjugation involving biopolymers or other types of polymeric materials. Advantages of this method are that cross-linking during conjugation is entirely avoided in addition to the mild chemical conditions under which this synthesis method proceeds. Diels-Alder reactions commonly take place in high-temperature environments; the method contemplated by this invention takes place at much lower temperatures. In addition to claiming methods of synthesis for conjugate vaccines using the Diels-Alder cycloaddition, the patent application claims vaccines produced utilizing the method, and methods of inducing antibodies which react with the polysaccharides contemplated by the invention.

5-Substituted Derivatives of Conformationally Locked Nucleoside Analogues

Victor Marquez, Pamela Russ (NCI)

DHHS Reference No. E–249–00/0 filed 26 Jul 2000

This invention relates to 5-substituted derivatives of conformationally locked nucleoside analogues and methods of using these derivatives as antiviral and anticancer agents. The compounds contemplated by the invention are nucleoside analogues where the 5-substituent is a halogen, alkyl, alkene, halovinyl or alkyne group, and the nucleotide base is cytosine or uracil. The analogues are particularly effective in treating viral infections, specifically infections of DNA viruses such as Herpes simplex virus (HSV), Varicella zoster virus (VSV), Epstein Barr virus (EBV), and Cytomegalovirus (CMV) as well as members of the Poxviridae family. The inventors have demonstrated in plaque reduction assays that 5-substituted uracils (bromo, iodo, and bromovinyl) attached to a bicyclo[3.1.0]hexane template are thirty times more potent than acyclovir against HSV–1 and HSV–2.

Bacteriophage Having Multiple Host Range

Carl Merril (NIMH), Sankar Adhya (NCI), Dean Scholl (NIMH)

DHHS Reference No. E–257–00/0 filed 25 Jul 2000

Recently, there has been a renewed interest in the use of phages to treat bacterial infections. The inventors have discovered FK1–5, a highly lytic, non-lysogenic, stable bacteriophage with the ability to kill bacteria rapidly, making it a good candidate for phage therapy. The designation FK1–5 denotes the phage's ability to infect E. coli strains that contain the K1 polysaccharide in their outer capsule as well as E. coli strains that contain the K5 polysaccharide in their outer capsule. Sequence analysis of the tail proteins of phage FK1–5 by the inventors has shown that they are arranged in a cassette structure, suggesting that the host range of phages can be broadened to other K antigens, and even possibly other species of bacteria by recombinant techniques. FK1–5 has a particular advantage because it recognizes and attaches to the structures that confer virulence to bacteria. The inventors' demonstration that a phage can contain multiple tail proteins that expand its host range is useful for generating phage with broad-spectrum antibacterial properties for the treatment of infectious diseases. The inventors have completed in vitro studies on this phage. Furthermore, because of the possibility of engineering the expression of recombinant tail proteins, gene transfer to organisms that are not normally infected by phages is also contemplated by the invention.

Dated: December 4, 2000.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–31525 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Mouse Model of UV-Inducible Cutaneous Malignant Melanoma

Glenn Merlino *et al.* (NCI)

DHHS Reference No. E–281–00/0

Licensing Contact: Elaine White; 301/496–7056 ext. 282; e-mail: gesee@od.nih.gov

The current invention embodies a genetically engineered mouse harboring a hepatocyte growth factor/scatter factor transgene (''HGF/SF''). The Met signaling pathway, which has been implicated in the development of human melanoma, is chronically

activated in the HGF/SF mice. Upon exposure to a single neonatal dose of erythrogenic UV radiation, the mice develop cutaneous malignant melanoma which is consistent with the epidemiology and pathogenesis of melanomas observed in humans. The mice, therefore, represent a valuable model for studying the development of malignant melanoma in humans, for determining the consequences of ultraviolet radiation, and for assessing the efficacy of therapeutic agents and vaccines against melanoma. While no patent rights are available for this invention, breeding pairs of mice are available for licensing via Biological Materials License Agreements.

Gamma-Glutamyl Transpeptidase Inhibitors: Novel Chemotherapeutic Agents

Robert E. London, Scott A. Gabel (NIEHS)
DHHS Reference No. E–243–00/0 filed 05 Oct 2000
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

Gamma-glutamyl transpeptidase (GGTP) plays a central role in the metabolism of glutathione. It has been shown to be a marker for neoplasia and cell transformation, and it is induced by the presence of many anti-cancer drugs. Common human epithelial tumors, including, but not necessarily limited to, breast, ovarian and prostate tumors are GGTP-positive. The invention relates to novel inhibitors of GGTP, and their use to treat cancer. In particular, the technology could be used to (1) interfere with glutathione metabolism in GGTP-positive cancers by perhaps altering the cellular orientation of GGTP; (2) potentiate the effects of radiation and chemotherapeutic drugs, in particular, cisplatin, on cancer cells by interfering with cysteine recycling and glutathione regeneration; and (3) reduce renal toxicity for some chemotherapeutic drugs by blocking the metabolism of glutathione-conjugates into toxic agents, *e.g.,* mercapturic acids. The patent application contains composition of matter claims as well as method claims.

Protein Kinase A and the Carney Complex

Constantine A. Stratakis, Lawrence S. Kirschner (NICHD)
DHHS Reference No. 259–00/0 filed 25 Aug 2000
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

The present invention provides compositions and methods useful in the diagnosis and prognosis of Carney complex (CNC), as well as methods and compositions for the identification of compounds useful in the treatment and/or prevention of CNC. CNC is a multiple endocrine neoplasia syndrome that affects the adrenal cortex, pituitary gland, thyroid gland and gonads. Additionally, compositions and methods are provided for the diagnosis and treatment of conditions associated with skin pigmentation defects, including but not limited to, freckling, as well as endocrine tumors including, but not limited to, adrenal and pituitary tumors. Finally, compositions and methods are provided for the diagnosis and treatment of various types of cancers associated with abnormal protein kinase A activity, and cancers and tumors in which protein kinase A regulatory subunit 1A acts as a tumor-suppressor gene. These actions are possible due to the identification of specific genetic sequences, and the use of this information in assay systems to detect, diagnose and treat the aforementioned conditions.

SH2 Domain Binding Inhibitors

Terrence R. Burke, Yang Gao, Johannes Voight (NCI)
DHHS Reference No. E–262–00/0 filed 22 Aug 2000
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

Signal transduction, the process of relaying extracellular messages to the intracellular cytoplasm and the nucleus, is critical to normal cellular homeostasis, and protein-tyrosine kinases play a central role in this biological function. Examples of this latter class of enzymes include the PDGF receptor, the FGF receptor, the HGF receptor, members of the EGF receptor family, including the EGF receptor itself and erb–B2, erb–B3 and erb–B4 kinases; the src kinase family, Fak kinase and the Jak kinase family. Protein-tyrosine phosphorylation is known to be involved in modulating the activity of a variety of target enzymes and in the formation of specific complex networks involved in signal transduction via proteins containing specific amino acid sequences, called the Src homology 2, or SH2 domain. A malfunction in this protein-tyrosine phosphorylation through tyrosine kinase overexpression and/or deregulation, can be manifested by various oncogenic and hyperproliferative disorders, such as cancer, inflammation, autoimmune disease, hyperproliferative skin disorders, *e.g.,* psoriasis and allergy/asthma. The disclosed compounds, *e.g.* peptides, preferably, macrocyclic peptides, are SH2 domain inhibitors with enhanced binding affinity. The claims of the current application are directed to compositions of matter and methods of use which provide for the diagnosis, testing and treatment of the aforementioned disease states.

Use and Targeting of CD98 Light-Chain Proteins in Therapies for Thyroid Hormone Disorders

Yun-Bo Shi (NICHD)
DHHS Reference No. E–054–00/0 filed 30 Jun 2000
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Thyroid hormone disorders are among the most common problems in the Western world. These include hypo-and hyper-thyroidism (including goiter), as well as obesity and developmental abnormalities caused by excess or deficient levels of thyroid hormones during pregnancy.

The NIH announces the discovery of a protein, which is a member of the CD98 light-chain permease family, which acts as a thyroid hormone transporter across vertebrate cell membranes. This protein provides a missing link in the chain by which thyroid hormones in the blood reach the cell nucleus. By utilizing the CDNA of this protein, genomic libraries can be screened for sequences capable of being used as primers for use in diagnostics. Also, by targeting this protein through drug discovery, new treatments for thyroid disorders may be found and developed.

Method of Regulating Interleukin-12 (IL–12) Production by Administering CCR5 Agonists and Antagonists

Sher *et al.* (NIAID)
PCT/US00/01019 filed 14 Jan 2000
Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

Interleukin-12 (IL–12) is a cytokine produced by the body which is necessary for the development of effective cellular immunity against many microbial agents. Increasing IL–12 production has been shown to both enhance the immune clearance of microbial agents as well as augment the protection induced by vaccines. At the same time a number of inflammatory diseases are associated with the excess production of this cytokine. Therefore, methods are needed to both boost IL–12 production for the induction of host resistance as well as suppress it to treat these immunopathologic disorders.

The present invention relates to methods for increasing IL–12

production in a cell by administering CCR5 agonists and methods for decreasing IL–12 production in a cell administering CCR5 antagonists. The invention also relates to methods for increasing IL–12 production by administering CCR5 agonists and to methods for decreasing IL–12 production in a subject by administering CCR5 antagonists.

Dated: November 11, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–31526 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 2000.

Time: 9:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 2000.

Time: 10:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31518 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 23–24, 2001.

Open: January 23, 2001, 1:00 p.m. to 5:00 p.m.

Agenda: For discussion of program policies and issues.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: January 24, 2001, 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31519 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council.

Date: January 18–19, 2001.

Closed: January 18, 2001, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: January 19, 2001, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: National Institute of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PHD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31520 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b((c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 18, 2000.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31521 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: The NIH is proposing changes to the NIH Guidelines to enhance its oversight of human gene transfer research by making modifications to the reporting and analysis of serious adverse events in human gene transfer research studies. The purpose of this Notice is to inform the public about the proposed changes and to seek public comment on them. The proposed changes involve four main issues: (1) The scope and timing of serious adverse event reporting; (2) public access to information about serious adverse events; (3) protection of individually identifiable patient information as it relates to serious adverse event reporting; and (4) a new mechanism for the review and assessment of data on serious adverse events and other relevant safety information.

The NIH currently requires all serious adverse events to be reported immediately whether or not they are expected or considered to be associated with the gene transfer product. The first proposed change would require expedited reporting for those serious adverse events that are unexpected and considered possibly associated with the use of the gene transfer product. The proposed change also provides timeframes for expedited reporting and definitions of serious, associated, and unexpected adverse events. Under this proposal, other reportable serious adverse events would be included in annual reports.

The second proposed change would clarify that serious adverse event reports submitted to the NIH may not be classified as confidential information and that trade secret or other commercial confidential information should not be included in serious adverse event reports.

The third proposed change adds specific language to the NIH Guidelines to prohibit the submission of individually-identifiable patient information in serious adverse event reports.

The fourth and final change is the establishment of a working group of the NIH Recombinant DNA Advisory Committee (RAC), to be known as the NIH Gene Transfer Safety Assessment Board, that will be responsible for the review and analysis of serious adverse event reports and other relevant safety information in gene transfer research studies. The working group will report safety information to the RAC and information will, thereby, be disseminated to the scientific and patient communities and the public.

DATES: The public is encouraged to submit written comments on these proposed changes. Comments may be submitted to NIH Office of Biotechnology Activities (OBA) in paper or electronic form. Comments received on or before February 10, 2002 will be reproduced and distributed to the RAC for consideration at a future meeting to be announced.

All comments received in response to this notice will be considered by the NIH and will be available for public inspection in the NIH OBA office weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION: If you have questions, or require additional information about these proposed changes, please contact OBA by e-mail at oba@od.nih.gov, or telephone at 301–496–9838. Comments can be submitted to the same email address or by fax to 301–496–9839 or mail to the Office of Biotechnology Activities, National Institutes of Health, Building 1, Room 103, Bethesda, Maryland 20892.

For additional information about the RAC meeting at which these proposed changes will be deliberated, please visit the NIH/OBA Web site at: *http://www.nih.gov/od/oba/.*

SUPPLEMENTARY INFORMATION:

Introduction

NIH's oversight of human gene transfer research, especially its requirements for serious adverse event reporting in human gene transfer research, has been the subject of an in-depth, year-long, public debate and discussion. In September 1999, the RAC initiated a discussion relating to public access to serious adverse event reports. The RAC's interest in this issue was prompted by claims from several human gene transfer investigators and sponsors that serious adverse event reports were confidential, commercial information and, therefore, should not be made publicly available. In November, following the death of a participant in a human gene transfer research protocol—a death directly attributable to the study—a number of new concerns arose about the collection, analysis, and dissemination of gene transfer safety information. The RAC subsequently expanded its discussions to include the scope and timing of NIH reporting requirements for serious adverse events and investigator compliance with those requirements.

In December 1999, the NIH Director established the Advisory Committee to the Director (ACD) Working Group on NIH Oversight of Clinical Gene Transfer Research. The charge to this Working Group was to review the role of NIH in oversight of this area of research, including an assessment of protocol review, analysis of serious adverse event reports, and the interaction between the various Federal agencies and local oversight bodies involved in regulation and oversight of this research. The ACD Working Group met four times and issued a final report to the ACD, which concurred with the Working Group's recommendations. The ACD Working Group report is posted at the following URL:

The changes proposed in this Notice respond to recommendations made by the ACD and by the RAC. They also reflect the views expressed by patients, patient advocates, investigators, industry representatives, and professional associations regarding the purpose, public good, and appropriate scope of toxicity and safety data collection and dissemination in human gene transfer research subject to the NIH Guidelines.

Background

The NIH Guidelines (Appendix M–I–C–4) currently require immediate reporting of all serious adverse events to NIH OBA, the IBC, the IRB, and, if applicable, the Office for Human Research Protections. This NIH requirement for immediate reporting of all serious adverse events, whether or not they are associated with the gene transfer product, was added to the NIH Guidelines in 1990, shortly after human gene transfer studies began. Because gene transfer was a novel and untested area of clinical investigation and because of the potential risks, NIH determined, with advice from the RAC, that it would be prudent to collect information on all serious adverse events in these studies.

These and other provisions of the NIH Guidelines apply to NIH-funded as well as non-NIH-funded gene transfer projects that are conducted at or sponsored by an institution that receives NIH support for recombinant DNA research. All human gene transfer research studies are also subject to FDA regulations found in volume 21 of the Code of Federal Regulations (CFR), including specific requirements at 21 CFR 312.32 related to adverse events.

Roles and Responsibilities of NIH and FDA. The scope and timeframe of the serious adverse event reporting to the NIH and the FDA currently differ. As noted above, NIH requires immediate reporting of all serious adverse events. FDA requires expedited reporting of only those serious adverse events that are unexpected and considered possibly associated with the gene transfer product.

The two agencies also have different roles and responsibilities with respect to adverse event reports and initiate different, but complementary, processes in response to these reports. The FDA conducts an analysis of an adverse event(s) and related data and, if necessary, places the study, and others like it, on clinical hold until the safety issues have been adequately addressed. The FDA is required by law to maintain the confidentiality of all information connected with an investigational new drug (IND). In contrast, the reporting of serious adverse events to NIH enables the identification of trends in serious adverse events, the assessment of their significance for the safety of patients enrolled in similar human gene transfer studies, and public discussion by the RAC of important developments in the safety of human gene transfer research.

Confidentiality of Adverse Event Reports. In September 1999, the RAC initiated discussions regarding public access to serious adverse event information. This discussion was in response to several serious adverse event reports submitted to OBA which were labeled as confidential. The NIH has always acknowledged and affirmed the need to protect trade secret and other proprietary information, such as the details of a sponsor's manufacturing process, and this principle is accommodated in the NIH Guidelines. The concept that reports of serious adverse events should be considered from a commercial standpoint as confidential, however, is contrary to NIH's commitment to public access to information about the safety of human gene transfer research. Since the NIH Guidelines were not explicit about the confidentiality of serious adverse event reports, NIH OBA asked the RAC to consider whether the NIH Guidelines should be modified to clarify the requirement for public access to these reports. In response, the RAC issued the following consensus statement:

> Adverse event reports shall not be designated as confidential, either in whole or in part. Adverse event reports are essential to decision-making by IBCs, IRBs, and potential subjects of gene transfer research in humans. The public disclosure of adverse events is also essential to public understanding and evaluation of gene transfer in humans. Adverse event reports must be made available for public discussion without the inclusion of proprietary or trade secret information.

Compliance with NIH Adverse Event Reporting Requirements. Subsequent to the death of a participant in a human gene transfer research protocol, which was directly attributable to the study, NIH OBA called on investigators conducting related studies to submit comprehensive pre-clinical and clinical data from their trials. In the course of gathering and assessing this data, it became evident that serious adverse events were not being reported to OBA, as required by the NIH Guidelines. Concerted efforts were immediately initiated to ensure enhanced awareness of, and compliance with, the reporting requirements. NIH also proposed that the NIH Guidelines be amended to make the requirements for reporting serious adverse events more explicit. The proposed amendments were published for public comment in the November 22, 1999, **Federal Register** (64 FR 63827). The proposed amendments added explicit definitions and spelled out timeframes for immediate reporting of serious adverse events.

In response to the notice, NIH OBA received a wide range of public comments from investigators, sponsors, industry, and patient advocacy organizations. Some commenters expressed vigorous support for the requirement that all serious adverse events be reported to OBA immediately, arguing that the requirement was warranted for the same reasons it was established in the first place'the field

was still young and the manipulation of genetic material posed risks that were still not fully known or understood. Other commenters suggested that NIH harmonize its requirements with those of the FDA so that it would receive, on an expedited basis, only those serious adverse events that are unexpected and considered to be possibly associated with the gene transfer product, and, on an annual basis, a summary of adverse events that are expected or considered to have other causes such as disease progression or concurrent medications. According to these commenters, requiring the immediate submission of all serious adverse events was counter-productive given the priority that should be placed on events that are unexpected and considered to be possibly associated with the gene transfer product. Other commenters stated that reporting any serious adverse event to OBA was unnecessary because FDA receives such reports by law and has authority to stop trials when necessary for safety concerns. Given that most serious adverse events are associated with disease progression, not the experimental gene transfer product, some commenters expressed concern that reporting of all serious adverse events had the potential to mislead or confuse the public about the cause of adverse events. They argued that the reporting of all such events would give the public the wrong impression about the risks involved in human gene transfer research.

Members of the RAC also expressed differing views about the appropriate scope of reporting. At its December 10, 1999, meeting, the Committee did not reach a consensus on whether the proposed amendments making more explicit the requirement for immediate reporting of all serious adverse events should be adopted. Consideration of the proposed amendments was deferred pending further RAC deliberations. Moreover, as noted previously, the ACD Working Group, formed in early December 1999, was also charged with considering the issue of serious adverse event reporting in the context of its broader review of NIH's role in the oversight of human gene transfer studies.

After extensive deliberations, the ACD Working Group submitted a report to the NIH ACD which concluded that: (1) public discussion of serious adverse events is an important component of the NIH oversight process; (2) serious adverse events should not be considered trade secrets or proprietary; (3) serious adverse event data should be disseminated to the public in an analyzed and interpreted form; and (4) because FDA is unable to disclose information, NIH OBA should continue to receive reports of serious adverse events directly from investigators or sponsors. With regard to the scope of what should be reported, the ACD Working Group recommended that NIH and FDA work together to simplify, streamline, and harmonize reporting of serious adverse events. The ACD Working Group also agreed that all reasonable measures be taken to protect the privacy of the individual who experienced the adverse event, without compromising the health of others in similar trials.

In addition, the ACD Working Group affirmed the need to gather cumulative data on gene transfer trials to improve the conduct and overall safety of such research, noting that systematic analyses of adverse event data could reveal trends related to, for example, specific diseases, routes of administration, or vectors. In this regard, the ACD Working Group recommended that a new mechanism was needed for ongoing analyses of the nature and frequency of adverse events reported over time, analyses that would be made available to the RAC, FDA, scientific community, and public. They recommended that a standing expert body be established to conduct ongoing analyses of adverse event data. The standing expert body should include basic scientists, clinicians, patient advocates, and ethicists. Ad hoc members could be appointed to provide additional expertise on an as-needed basis. The standing body should review all reports of adverse events, analyze the data for trends, develop a cumulative report that should be presented annually at a public RAC meeting and made available to the public, and identify trends or even single events that may warrant further public discussion or Federal action.

In June 2000, the RAC reviewed the conclusions and recommendations of the ACD Working Group and, after engaging in further discussion about the appropriate timing and scope of serious adverse event reporting, endorsed the ACD Working Group recommendations by a unanimous vote. In September 2000, the full ACD reviewed and endorsed the recommendations of the Working Group at a publicly accessible teleconference.

The public deliberations of the ACD and the RAC affirmed the importance of NIH's role in ensuring the safety of human gene transfer research studies. This role differs from, and in important ways complements, the role of the FDA, which is to respond on a timely basis to serious, life-threatening, unexpected events that are associated with the investigational product. NIH's role is to gather information about the safety of the field in general and to disseminate that information to investigators and the public with the purpose and goal of developing a body of knowledge about the risks and benefits of this form of clinical investigation.

The NIH concurs with the need to harmonize Federal requirements for reporting serious adverse events and other safety information. With this action, NIH is proposing to amend the NIH Guidelines to require expedited reporting of serious adverse events that are unexpected and considered to be possibly associated with the use of the gene transfer product. The scope and timeframe for reporting these events and other safety information, as well as definitions used, would parallel those of the FDA as set forth in volume 21 of the CFR. Submission of a comprehensive summary of serious adverse event data will be required on an annual basis, again in harmony with the FDA requirements.

The comprehensive public review of serious adverse event data by the RAC is a critical component of Federal oversight of human gene transfer research. A systematic and publicly accountable review and assessment of toxicity and safety data from these trials over time is essential for identifying trends and recognizing patterns that may have important implications for the future development of human gene transfer research. In order to enhance NIH's ability to perform this critical function, and in accordance with the recommendations of the ACD, the NIH is proposing to establish a new mechanism for the review and assessment of serious adverse events. The specific proposed mechanism is a working group of the RAC, to be known as the NIH Gene Transfer Safety Assessment Board. The working group's specific functions would involve: (1) Reviewing serious adverse event reports, annual reports, and other relevant safety information and assessing toxicity and safety data across all gene transfer trials and analyzing the data for trends; (2) identifying significant trends or single events; (3) developing information that will enhance the development, design, and conduct of human gene transfer clinical trials; and (4) reporting aggregated data to the RAC to enhance review of new protocols and to enhance public understanding and awareness of the safety of human gene transfer research studies as well as the informed decision-making of potential trial participants. The working group would

be composed of government and non-governmental experts in relevant clinical specialties; pediatric, adult, and geriatric medicine; relevant basic science disciplines such as genetics, virology, and immunology; biostatistics; bioethics; and patient advocacy. The working group would include liaison representation from the FDA. The working group would consist of approximately 15 members, at least two of whom would be RAC members, appointed by the NIH Director. The working group would meet quarterly or more frequently if needed.

Patient safety is the utmost concern. NIH believes that the proposed changes will expand knowledge, advance the science and ethics of the field of human gene transfer research, and optimize NIH oversight of the field.

Proposed Amendments to the NIH Guidelines

Although the NIH has received a considerable amount of valuable advice and a range of perspectives from the public and advisory groups, NIH wishes to provide another opportunity for public comment before finalizing these proposed amendments regarding serious adverse event reporting. The specific proposed amendments to the NIH Guidelines are as follows: (1) Change the requirements for expedited reporting of serious adverse events; (2) clarify that trade secret or other commercial confidential information should not be included in serious adverse event reports and that serious adverse event reports may not be classified as confidential information; (3) add a new section prohibiting individually identifiable patient information from being included in serious adverse event reports; and (4) establish a working group of the RAC, to be known as the NIH Gene Transfer Safety Assessment Board, to be responsible for the review and analysis of serious adverse events and other relevant safety information in gene transfer research studies and dissemination of safety information to the RAC, and, thereby, to the scientific and patient communities, and the public.

A new Section I–E–8 is proposed to be added to read:

''Section I–E–8. A 'serious adverse event' is any event occurring at any dose that results in any of the following outcomes: Death, a life-threatening event, in-patient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization also may be considered a serious adverse event when, upon the basis of appropriate medical judgment, they may jeopardize the human gene transfer research subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition.''

A new Section I–E–9 is proposed to be added to read:

''Section I–E–9. An adverse event is 'associated with the use of a gene transfer product,' when there is a reasonable possibility that the event may have been caused by the use of that product.''

A new Section I–E–10 is proposed to be added to read:

''Section I–E–10. An unexpected serious adverse event is any serious adverse event for which the specificity or severity is not consistent with the risk information currently available in the protocol.''

Section IV–B–7. Principal Investigator (PI) is modified to read:

Section IV–B–7. Principal Investigator (PI)

On behalf of the institution, the Principal Investigator is responsible for full compliance with the NIH Guidelines in the conduct of recombinant DNA research. A Principal Investigator engaged in human gene transfer research may delegate to another party, such as a corporate sponsor, the reporting functions set forth in Appendix M, with written notification to NIH OBA of the delegation and of how the delegate may be contacted. The Principal Investigator is responsible for ensuring that the reporting requirements are fulfilled and will be held accountable for any reporting lapses.''

Current M–I–C–3, Annual Reporting, is proposed to be modified proposed to read in its entirety:

Appendix M–I–C–3, Annual Reports

Within 60 days of the one-year anniversary of the date on which the clinical trial was initiated and of each subsequent anniversary until the trial is completed, the Principal Investigator (or delegate) shall submit a summary report of the progress of the investigation that includes:

(a) Clinical Trial Information. A brief summary of the status of each trial in progress and each trial completed during the previous year. The summary is required to include the following information for each trial: (1) The title and purpose of the trial; (2) clinical protocol identifiers, including the NIH OBA protocol number, NIH grant number(s) (if applicable), and the FDA IND application number; (3) participant population; (4) the status of the trial; (5) the total number of participants planned for inclusion in the trial; the number entered into the trial to date; the number whose participation in the trial was completed; and the number who dropped out of the trial for any reason; and (6) if the trial has been completed, a brief description of any study results.

(b) Progress Report and Data Analysis. Information obtained during the previous year's clinical and non-clinical investigations, including: (1) A narrative or tabular summary showing the most frequent and most serious adverse experiences by body system; (2) a summary of all serious adverse events submitted during the past year; (3) a summary of serious adverse events that are expected or considered to have causes not associated with the use of the gene transfer product such as disease progression or concurrent medications; (4) the number of participants who died during participation in the investigation and causes of death; (5) a brief description of any information obtained pertinent to an understanding of the gene transfer product's actions, including, for example, information about dose-response, information from controlled trials, and information about bioavailability.

(c) A copy of the updated clinical protocol including a technical and non-technical abstract.

Current Appendix M–I–C–4, Serious Adverse Event Reporting is proposed to be modified in its entirety to read:

Appendix M–I–C–4, Safety Reporting

Principal Investigators must submit, in accordance with this section, Appendix M–I–C–4–a and Appendix M–I–C–4–b, a written report on: (1) Any serious adverse event that is both unexpected and possibly associated with the use of the gene transfer product; and (2) any finding from tests in laboratory animals that suggests a significant risk for human research participants including reports of mutagenicity, teratogenicity, or carcinogenicity. The report must be clearly labeled as a ''Safety Report'' and must be submitted to the Office of Biotechnology Activities (OBA) and to the local Institutional Biosafety Committee within the timeframes set forth in Appendix M–I–C–4–b.

Principal Investigators should adhere to any other serious adverse event reporting requirements in accordance with Federal regulations, state laws, and local institutional policies and procedures, as applicable.

Principal Investigators may delegate to another party, such as a corporate sponsor, the reporting functions set forth in Appendix M, with written notification to NIH OBA of the delegation and of how the delegate may be contacted. The Principal Investigator is responsible for ensuring that the reporting requirements are fulfilled and will be held accountable for any reporting lapses.

The three alternative mechanisms for reporting serious adverse events to OBA are: by e-mail to oba@od.nih.gov; by fax to 301–496–9839; or by mail to the Office of Biotechnology Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010.

Appendix M–I–C–4–a, Safety Reporting: Content and Format

Reports of serious adverse events should follow the format provided in the Adverse Event Reporting Format available on NIH OBA's web site at: http://www.nih.gov/od/oba/. The serious adverse event report must include, but need not be limited to: (1) The date of the event; (2) designation of the report as an initial report or a follow-up report; (3) a complete description of the event; (4) relevant clinical observations; (5) relevant clinical history; (6) relevant tests that were or are planned to be conducted; (7) the suspected cause of the event; (8) gene delivery method; (9) vector type, *e.g.*, adenovirus; (10) vector subtype, *e.g.*, type 5, relevant deletions; (11) dosing schedule; (12) route of administration; (13) identification of all safety reports previously filed with the clinical protocol concerning a similar adverse event and an analysis of the significance of the adverse event in light of previous similar reports; (14) clinical site; (15) the principal investigator; (16) NIH Protocol number; and (17) FDA's Investigational New Drug (IND) Application number.

Serious adverse event reports must not contain individually identifiable patient information.

Reports from laboratory animal studies must be submitted in a narrative format.

Unless NIH OBA determines that there are exceptional circumstances, all information submitted in accordance with Appendix M–I–C will be considered public. Safety reports submitted in accordance with Appendix M–I–C will not be considered to contain any trade secret or commercial or financial information that is privileged or confidential as defined under the Freedom of Information Act, 5 U.S.C. 552.

Appendix M–I–C–4–b, Safety Reporting: Time-Frames for Expedited Reports

Any serious adverse event that is fatal or life-threatening, that is unexpected, and possibly associated with the use of the gene transfer product must be reported to NIH OBA as soon as possible, but not later than 7 calendar days after the sponsor's initial receipt of the information (*i.e.*, at the same time the event must be reported to the FDA).

Serious adverse events that are unexpected and possibly associated with the use of the gene transfer product, but are not fatal or life-threatening, must be reported to NIH OBA as soon as possible, but not later than 15 calendar days after the sponsor's initial receipt of the information (*i.e.*, at the same time the event must be reported to the FDA).

If, after further evaluation, an adverse event initially considered not to be possibly associated with the use of the gene transfer product is subsequently determined to be possibly associated, then the event must be reported to NIH OBA within 15 days of the determination.

Relevant additional clinical and laboratory data may become available following the initial serious adverse event report. Any follow-up information relevant to a serious adverse event must be reported within 15 calendar days of the sponsor's receipt of the information. If a serious adverse event occurs after the end of a clinical trial and is determined to be possibly associated with the use of the gene transfer product, that event shall be reported to NIH OBA within 15 calendar days of the determination.

Any finding from tests in laboratory animals that suggests a significant risk for human research participants including reports of mutagenicity, teratogenicity, or carcinogenicity must be reported as soon as possible, but not later than 15 calendar days after the sponsor's initial receipt of the information (*i.e.*, at the same time the event must be reported to the FDA).''

A new Appendix M–I–D is proposed to be added:

Appendix M-I-D, Safety Assessment in Human Gene Transfer Research

A standing working group of the RAC, the NIH Gene Transfer Safety Assessment Board, will: (1) Review serious adverse event reports, annual reports, and other relevant safety information made to OBA for the purpose of assessing toxicity and safety data across all gene transfer trials and analyzing the data for trends; (2) identify significant trends or single events; (3) develop information that will enhance the development, design, and conduct of human gene transfer clinical trials; and (4) report aggregated trend data to the RAC to enhance review of new protocols and to enhance public understanding and awareness of the safety of human gene transfer research studies as well as the informed decision-making of potential trial participants. The working group members are appointed by the NIH Director.''

Current Appendix M–IV. Privacy and Confidentiality is proposed to be amended by the addition of the following sentence at the end of the section:

Current Appendix M–IV. Privacy and Confidentiality

''* * * These measures should protect the confidentiality of information that could indirectly enable identification of study participants, as well as information that would directly identify study participants.''

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which recombinant DNA techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: December 4, 2000.

Ruth L. Kirschstein,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 00–31524 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4541–N–04]

Notice of Proposed Information Collection Revision: Comment Request, FHIP SuperNOFA Application Kit

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the *Fair Housing Initiatives Program* will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: February 12, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW., Room 5228, Washington, DC 20410. Telephone number (202) 708–0800.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. (This is not a toll-free number). Hearing or speech-impaired individuals may access this TTY number by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), as amended.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to certify: (1) That recipients of FHIP funds will not use FHIP funds to settle a claim, satisfy a judgment, or fulfill a court order in any defensive litigation or (2) whether key project personnel have a prior felony conviction or been convicted of a crime or crimes involving fraud or perjury.

Notice of Submission of Proposed Information Collection Revision to OMB

Title: Fair Housing Initiatives Program SuperNOFA Application Kit and Reporting/Recordkeeping Requirements Revision.

OMB Approval Number: 2529–0033.

Description of the Need for the Information and its Proposed Use: The information required by this certification will enable the Department to determine that selected agencies are using FHIP funds as intended (to prevent and eliminate discriminatory housing practices). These grants are authorized under Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) and the implementing regulations are found at 24 CFR Part 125.

Agency form numbers: SF–269A, SF–424/A/B/M: SF–LLL, HUD 2880, HUD 2992, HUD50070, HUD–50071:

Members of Affected Public: 400.

Reporting Burden: The Department estimates that the application kit, Certificate, quarterly report, final report, and enforcement log, will have the following reporting burdens:

Application	Number of respondents	Frequency	Hours per response	Burden hours
Development	400	1	53	21,200
The number of respondents is based on the total number of applications received under all initiatives. The number of hours per response is an average based on grantee estimates of time to review instructions, search existing data sources, prepare required responses to the application kit, and assemble exhibits.				
Certification	70	2	4	560
Quarterly Report	70	4	12	3,360
Enforcement Log	35	4	7	980
Final Report	70	1	20	1,400

Estimates are based on 70 of 400 applications funded, thus, 70 respondents will file a Certification for Recipients of FHIP Funds, at least twice. In addition, respondents will report 4 times annually on program performance and financial status. Approximately one-half of the funded recipients will be requested to complete the enforcement log. Hours per response are averages based on grantee estimates of time to review instructions, search existing data sources, gather and maintain the needed data, and complete or respond to the requested information. Actual time may vary because of differences in grant activities, size, or complexity, and depending on whether the grantee automates the format.

Status of the proposed information collection: Revision.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 5, 2000.

Pamela Walsh,

Director, Program Standards Division.

[FR Doc. 00–31503 Filed 12–11–00; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–15]

Order of Succession for the Secretary of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Secretary of Housing and Urban Development designates the Order of Succession for the position of Secretary of Housing and Urban Development. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on December 11, 1989 at 54 FR 50823.

EFFECTIVE DATE: November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Virginia Kelly Ackerman, Senior Attorney, Procurement and Administrative Law Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone: 202–708–0622. (This is not a toll-free number.) This telephone number may be accessed via TTY by

calling the Federal Information Relay Service at 1–800–877–8339.

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Secretary is not available to exercise the powers or perform the duties of the Secretary, the following are hereby designated to exercise all powers, functions and duties assigned to or vested in the Secretary. However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office:

(1) Deputy Secretary
(2) General Counsel
(3) Assistant Secretary for Housing-Federal Housing Commissioner
(4) Assistant Secretary for Community, Planning and Development
(5) Assistant Secretary for Public and Indian Housing
(6) Assistant Secretary for Policy Development and Research
(7) Assistant Secretary for Fair Housing and Equal Opportunity
(8) Assistant Secretary for Congressional and Intergovernmental Relations
(9) Assistant Secretary for Administration
(10) Assistant Secretary for Public Affairs.

In the event of a national security or other emergency and none of the officials named above is able to act, appointees to the positions listed below are authorized to exercise all powers, functions, and duties assigned to or vested in the Secretary. Executive Order No. 12656, 53 FR 47491 (published November 23, 1988), as amended at 63 FR 7277 (February 12, 1998). However, no official shall act as Secretary until, all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office:

1. President, Government National Mortgage Association
2. Chief Financial Officer
3. Director, Office of Federal Enterprise Oversight
4. Secretary's Representative, New England (Boston)
5. Secretary's Representative, New York/New Jersey (New York)
6. Secretary's Representative, Mid-Atlantic (Philadelphia)
7. Secretary's Representative, Southeast/Caribbean (Atlantic)
8. Secretary's Representative, Midwest (Chicago)
9. Secretary's Representative, Southwest (Fort Worth)
10. Secretary's Representative, Great Plains (Kansas City)
11. Secretary's Representative, Rocky Mountains (Denver)
12. Secretary's Representative, Pacific/Hawaii (San Francisco)
13. Secretary's Representative, Northwest/Alaska (Seattle)

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession of the Secretary of Housing and Urban Development, published at 54 FR 50823 (December 11, 1989).

Authority: Executive Order 11274, 5 U.S.C. 3347; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Executive Order 12656, 53 FR 47491 (November 23, 1988), as amended at 63 FR 7277 (February 12, 1998); Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d.

Dated: November 30, 2000.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 00–31504 Filed 12–11–00; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval under the Paperwork Reduction Act (PRA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: New information collection—NEPA compliance checklist.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has submitted the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement and related forms and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Consideration will be given to all comments received on or before January 11, 2001. OMB has up to 60 days to approve or disapprove an information collection, but may respond after 30 days. Therefore to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer (1018–XXXX), New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 and they should send a copy of the comments to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack_Hicks@fws.gov* E-mail.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public have the opportunity to comment on information and record keeping activities.

On September 1, 2000 the Director of the U.S. Fish and Wildlife Service signed Director's Order No. 127 establishing policy and procedures for the preparation of an administrative record for complying with the requirements of the National Environmental Policy Act (NEPA) by Service personnel who administer Federal financial assistance programs. This record was developed in the form 3–2185 adopted by the Service as the NEPA Compliance Checklist.

On September 12, 2000 the Service published in the **Federal Register** (FR Vol. 65, No. 177, p55032) a 60 day notice and request for public comment on this information collection. That comment period ended on November 13, 2000. We received the following comments from this earlier notice.

1. One private individual E-mailed asking where she could get copies of the form and supporting information.

Response: She was referred by return E-mail to the Service's Home Page with directions for navigation to the Director's Order. A sample of the new form was attached to the E-mail response.

2. A State employee E-mailed the following comments.

A. The wording on Item 6 is so broad that almost anything could be categorically excluded (2 examples were included with the comment), please remove this Item.

B. Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. The wording for Item 6 carries this to a new level that

will cause confusion and unnecessary writing of EA's.

Response to both: The language in item 6 in the NEPA Compliance Checklist is not new to the Service. It has been a requirement in the Council on Environmental Quality regulations since 1978, and in the Departmental Manual (516 DM 2, App 2.6) since (at least) September 26, 1984. This requirement has been referenced in the Service's NEPA Manual since 1984. The intent is clear, Federal Agencies must address cumulative impacts of their actions. Your concern is how broadly (or how stringently) this is interpreted, particularly when it exists as an exception to a categorical exclusion. The Service has no absolute requirement as to when a categorical exclusion or an exception apply, it is not possible due to the complexity of our programs. In the past our application of this requirement and the interpretation by the courts of our decisions have been based on a rule of reason. Item 6 stays in the document, but as always, will be applied reasonably to more complex issues. The Service will continue to take a reasonable approach, consistent with NEPA, when determining when to prepare an EA or EIS.

3. A State wrote that they thought the new language was more restrictive than they have been using in the past and explained a process they use currently.

Response: The items on the checklist are the minimum thresholds for initiating either an Environmental Assessment or and Environmental Impact Statement. The process you currently use, the memorandum of understanding between your agency and the State Historic Preservation Office, is not endorsed by the FWS, DOI, or CEQ.

4. Another State wrote that the Service should delay implementation of this checklist until after the Department has issued new manual chapters regarding DOI policy on NEPA.

Response: The checklist spells out the current minimum requirements for NEPA and will be changed to include the new items that may be added to the list by the Department of Interiors policy development process currently underway. What we are doing with the checklist now will gain approval from OMB for use of the checklist and ensure that everyone knows what the current minimum requirements are for NEPA consideration.

No other comments were received.

Description and Use: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act, the Clean Vessel Act, the Sportfishing and Boating Safety Act, North American Wetlands Conservation Act, the Coastal Wetlands Planning, Protection and Restoration Act, and through other Acts and authorities. The Service uses the information collected to make a determination as to National Environmental Policy Act compliance. The State or other grantee uses the checklist as a guide to general NEPA requirements and it becomes an administrative record to meet their assurances requirements for receiving a grant. Grant applicants provide the information requested in the NEPA Compliance Checklist in order to qualify to receive benefits in the form of grants for purposes outlined in the applicable law. This form is designed to cause the minimum impact in the form of hourly burden on grant applicants and still get all the required information. Only about 3 percent of the Service's applicants for either a new grant or for an amendment to an existing grant will meet the criteria, and need to complete the NEPA Compliance Checklist.

Title of Form: NEPA Compliance Checklist

FWS Form Number: 3–2185

OMB Control Number: 1018–XXXX The Service will receive a control number from OMB prior to collecting any information. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Supplemental Information: The Service has submitted the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Frequency: Generally annually.

Description of Respondents: State Government, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and others receiving grant funds.

COMPLETION TIME AND ANNUAL RESPONSE AND BURDEN ESTIMATE

Form name	Completion time per checklist	Annual response	Annual burden
NEPA Compliance Checklist	½ Hour	160	80

BILLING CODE 4310–55–M

NEPA COMPLIANCE CHECKLIST **OMB Control Number 1018-XXXX**
Expires: xx/xx/xxxx

State: **Federal Financial Assistance Grant/Agreement/Amendment Number:**

Grant/Project Name:

This proposal ☐ is; ☐ is not completely covered by categorical exclusion No(s). _____, 516 DM 6 Appendix 1.
(check (✓) one) *(Review proposed activities. An appropriate categorical exclusion must be identified before completing the remainder of the Checklist. If a categorical exclusion cannot be identified, or the proposal cannot meet the qualifying criteria in the categorical exclusion, an EA must be prepared.)*

Exceptions:

Will This Proposal *(check (✓) yes or no for each item below)*:

Yes	No		
☐	☐	1.	Have significant adverse effects on public health or safety.
☐	☐	2.	Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.
☐	☐	3.	Have highly controversial environmental effects.
☐	☐	4.	Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
☐	☐	5.	Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
☐	☐	6.	Be directly related to other actions with individually insignificant, but cumulatively significant environmental effects.
☐	☐	7.	Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
☐	☐	8.	Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.
☐	☐	9.	Have material adverse effects on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
☐	☐	10.	Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(If any of the above exceptions receive a "Yes" check (✓), an EA must be prepared.)
Concurrences/Approvals:

Project Leader: _____ Date: _____

State Authority Concurrence: _____ Date: _____
(with financial assistance signature authority, if applicable)

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the grant/agreement/amendment:

☐ **is a categorical exclusion as provided by 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.**
☐ **is not completely covered by the categorical exclusion as provided by 516 DM 6, Appendix 1. An EA must be prepared.**
☐ **includes other attached information supporting the Checklist.**

Service signature approval:
RO/WO Environmental Coordinator (if required): _____ Date: _____

Staff Specialist, Division of Federal Aid: _____ Date: _____

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one-half hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, 1018-XXXX, U.S. Fish and Wildlife Service, MS 222-ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Dated: November 17, 2000.

Rebecca A. Mullin,

Fish and Wildlife Service Information Collection Clearance Officer.

[FR Doc. 00–31508 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–PF–01–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0168

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of an existing approval to collect certain information from private landowners which will allow BLM to determine road use and maintenance fees for logging road right-of-way permits issued under the O&C Logging Road Right-of-Way regulations (43 CFR 2812).

DATES: You must submit your comments to BLM at the appropriate address below on or before February 12, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0168'' and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Styduhar, BLM Oregon State Office, on (503) 952–6454 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Styduhar.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 2812 to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Private landowners in western Oregon obtain authorization to transport their timber over BLM-controlled roads under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). The logging road right-of-way permits that BLM issues are subject to the requirements of the O&C Logging Road Right-of-Way regulations (43 CFR Part 2812). As a condition of each right-of-way permit, a permittee must provide BLM with a certified statement containing the amount of timber removed, the lands from which the timber was removed, and the BLM roads used to transport the timber. BLM collects this information on a quarterly basis using the Form OR–2812–6, Report of Road Use.

The monies BLM receives for road use contribute to the recovery of costs incurred in the construction of forest access roads. Fees collected for road maintenance are reimbursements for services BLM provided to maintain roads the permittees use. If BLM did not require the collection of information included in the Report of Road Use Form, it would not be possible to determine payment amounts, ledger account status, or monitor a permittee's compliance with the terms of the permit. The costs for services BLM provides would not be collected in a timely manner if we reduce the frequency of reporting. This would have a direct effect on the ability of BLM to properly maintain its road system, protect the road investment, and provide safe and efficient access to the public lands.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected estimates to average 1 hour per response. The respondents include individuals, partnerships, and corporations engaged in the removal and transportation of timber and other forest products. The frequency of response is quarterly. The estimated number of responses per year totals 400. The estimated total annual burden is 1600 hours. BLM specifically requests your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the

request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 6, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–31497 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–01–1220–PA: GP1–0051]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Tuesday, January 9, 2001 from 8 a.m. to 12 p.m. in the Conference Room at the Baker County Library, 2400 Resort Street, Baker City, Oregon. Public comments will be received from 11 a.m. to 11:15 a.m., January 9, 2001. Topics to be discussed are the review and approval of the updated Strategic Plan, reports from Coordinators of Subcommittees, and the development of Action Plan and Recommendations for FY2001–2002.

DATES: The meeting will begin at 8 a.m. and run to 12 p.m. January 9, 2000.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541–523–1845).

Sandra L. Guches,

Acting Vale District Manager.

[FR Doc. 00–31506 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–33–M

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 BLM Alaska Resource Advisory Council will conduct an open meeting Thursday, January 11, 2001, from 9:30 a.m. until 4:30 p.m. and Friday, January 12, 2001, from 8:30 a.m. until 3 p.m. The meeting will be held at the BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska.

The primary agenda item for this meeting is to review draft resource management standards for BLM public lands in Alaska and to take public comment on this draft from 1 to 3 p.m. Thursday, January 11, 2001. The draft standards are standards are available for public review and comment at www.ak.blm.gov or call (907) 271–5555 to request a copy. Both oral and written comments will be taken at the meeting, or written comments may be 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.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 00–31536 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Preparation of a New 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002–2007; and Notice of Intent To Prepare an Environmental Impact Statement for the Proposed 5-Year Program

SUMMARY: Section 18 of the OCS Lands Act (43 USC 1344) requires the Department of the Interior to solicit information from interested and affected parties during the preparation of a 5-year OCS oil and gas leasing program. The current 5-year program covers the period July 1997 to July 2002. The Minerals Management Service (MMS) intends to prepare a new 5-year program for 2002–2007 to succeed the current one.

The MMS is starting the program preparation process at this time because section 18 requires completion of a lengthy, multi-step process of consultation and analysis before the Secretary of the Interior may approve a new 5-year program. The section 18 process includes the following required steps: this solicitation of comments; development of a draft proposed program, a proposed program, and a proposed final program; and Secretarial approval. The MMS also will prepare an Environmental Impact Statement (EIS) that analyzes the alternatives considered for the new 5-year program. This notice announces the start of the EIS preparation process. The MMS will consider comments received in response to this notice in developing the draft proposed program and in determining the scope of the EIS.

DATES: The MMS must receive all comments and information by February 1, 2001.

ADDRESSES: Mail comments and information to: 5-Year Program Manager, Minerals Management Service (MS–4400), Room 2324, 381 Elden Street, Herndon, Virginia 20170. The MMS will accept hand deliveries at 1849 C Street, N.W., Room 4230, Washington, D.C. Please label your comments and the packaging in which they are submitted as to subject matter: mark those pertaining to program preparation, ''Comments on Preparation of the 5-Year Program for 2002–2007; and mark those pertaining to EIS preparation, ''Scoping Comments on the EIS for the 5-Year Program for 2002–2007.'' If you submit any privileged or proprietary information to be treated as confidential, please mark the envelope, ''Contains Confidential Information.''

The MMS will accept comments submitted by electronic mail. Send your comments on the preparation of the program to *MMS5-year.document@mms.gov* and your comments concerning the scope of the EIS to *MMS5-year.eis@mms.gov.* We also will provide access to information concerning the 5-year program and EIS, including copies of comments we receive in response to this notice, at the MMS internet website (www.mms.gov).

Public Comment Procedure

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold his or her name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission.

We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

FOR FURTHER INFORMATION CONTACT: Ralph Ainger, 5-Year Program Manager, at (703) 787–1215.

SUPPLEMENTARY INFORMATION: The MMS requests comments from states, local governments, American Indian and Native Alaskan organizations, the oil and gas industry, federal agencies, environmental and other interest organizations, and other parties to assist in the preparation of a 5-year OCS oil and gas leasing program for 2002–2007 and applicable EIS. The 5-year program enables the federal government, states, industry, and other interested parties to plan for steps proposed to lead to OCS oil and gas lease sales. The Department will make a decision on whether to proceed with a specific sale on the schedule only after meeting all of the applicable requirements of the OCS Lands Act, the National Environmental Policy Act (NEPA), and other statutes.

The program preparation process will follow all the procedural steps required by section 18 of the OCS Lands Act. This notice solicits comments early in the preparation process pursuant to section 18(c)(1). The MMS will prepare a draft proposed program based on consideration of the comments we receive and analysis of the principles and factors specified in section 18. The draft proposed program will present for review and comment a preliminary schedule of lease sales indicating the size, timing, and location of OCS leasing proposed for 2002–2007, as well as provisions for assuring receipt of fair market value for leases.

OCS Planning Areas To Be Considered and Analyzed

The OCS consists of 26 planning areas for purposes of administering the 5-year program and related OCS oil and gas activities. Figures 1 and 2 depict the 26 OCS planning areas. Note that precise marine boundaries between the United States and nearby or adjacent nations have not been determined in all cases. The depicted maritime boundaries and limits, as well as divisions between planning areas, where shown, are for planning purposes only. These limits shall not affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters or of sovereign rights or jurisdiction for any purpose whatsoever.

In 1998, acting under the authority of section 12 of the OCS Lands Act (43 USC 1341), the President withdrew the following planning areas from disposition by leasing through June 30, 2012: North Aleutian Basin; Washington-Oregon; Northern, Central, and Southern California; Eastern Gulf of Mexico, except the Sale 181 area located off Alabama and more than 100 miles off Florida; and South, Mid, and North Atlantic. The President also withdrew indefinitely all National Marine Sanctuaries, which are located in the following planning areas: Washington-Oregon (Olympic Coast); Central California (Cordell Bank, Gulf of the Farallones, and Monterey Bay), Southern California (Channel Islands), Western Gulf of Mexico (Flower Garden Banks); Straits of Florida (Florida Keys); South Atlantic (Gray's Reef); Mid-Atlantic (Monitor); and North Atlantic (Stellwagon Bank). None of the areas withdrawn under section 12 will be available for leasing during the timeframe of the next 5-year program.

Section 18 requires the Secretary of the Interior to begin the 5-year program preparation process by soliciting information pertaining to all of the areas of the OCS that have not been withdrawn (*i.e.,* the portions of the OCS not listed above). We will consider information we receive concerning the available areas in light of the criteria specified in section 18, which are discussed below. If the Secretary decides not to propose leasing in an area in the draft proposed program, further analysis of that area under section 18 will not be necessary.

Types of Information Requested

The MMS invites comments from anyone who would like to submit information for us to consider in determining the appropriate size, timing, and location of OCS leasing for the 5-year period July 2002 to July 2007. The types of information we seek are described below using general and specific headings. Regardless of these headings, all respondents are welcome to comment on any aspect of program preparation and to submit any type of pertinent information.

General

The MMS would like to receive comments and suggestions of nationwide application that would be useful in formulating the new 5-year program. The types of information that would be most useful to us in conducting the section 18 analysis relate to the following factors:

(1) National energy needs for the period relevant to the new program (in particular for this program, the role of OCS leasing in achieving national energy policy goals, including its potential for contributing to increased domestic natural gas supplies, as addressed further below); the economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS; and the potential impact of oil and gas exploration on other resource values of the OCS and the marine, coastal, and human environments;

(2) Geographical, geological, and ecological characteristics of the planning areas of the OCS and nearshore environments;

(3) Equitable sharing of developmental benefits and environmental risks among the various planning areas;

(4) Location of planning areas with respect to, and the relative needs of, regional and national energy markets;

(5) Other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of OCS resources and locations;

(6) Relative environmental sensitivity and marine productivity of the different planning areas of the OCS;

(7) Environmental and predictive information pertaining to offshore and coastal areas potentially affected by OCS development (including socio-cultural and archaeological information); and

(8) Methods and procedures for assuring the receipt of fair market value for lands leased.

The MMS also invites you to respond to the following questions:

(i) Since the national energy picture concerning ''needs'' as mentioned above has been volatile, how should the 5-year program for 2002–2007 be structured to meet those needs? What do you think is the proper role of the OCS in national energy policy?

(ii) Since recent studies have projected shortfalls in meeting energy needs such as for home heating oil, and especially natural gas, how should such needs be balanced with the laws, goals, and policies influencing the management of the OCS? Specifically, since concerns from affected states, such as those identified in studies conducted by the National Research Council, have led to past congressional and presidential actions to restrict many areas, how should long-term planning address the current situation?

(iii) Although OCS oil and gas leasing is typically conducted through an extensive, long-established process, are there alternative ways to ensure appropriate consultation and to streamline our procedures? How might we best meet the purpose of the OCS Lands Act ''to insure that the extent of oil and gas resources of the Outer Continental Shelf is assessed at the earliest practicable time?''

Specific

Affected Coastal States

As specified in section 18(a)(2)(F), the MMS requests the governors of affected

states to identify state laws, goals, and policies relevant to OCS oil and gas. We have sent to each of those governors a letter soliciting such information. Pursuant to section 18(f)(5) and implementing regulations at 30 CFR 256.20, we request information concerning the relationship between OCS oil and gas activity and the states' coastal management programs that are being developed or administered under the Coastal Zone Management Act. We also request the affected states to submit information concerning environmental risk and potential for damage to coastal and marine resources associated with development of the OCS, information related to other uses of the sea, and any information in your possession that is relevant to equitable sharing of developmental benefits and environmental risks associated with OCS oil and gas activity.

Oil and Gas Industry

As specified in section 18(a)(2)(E), the MMS requests oil and gas industry respondents to provide information indicating your interest in the opportunity to lease and develop additional OCS oil and gas resources. You should base this information on your expectations as of 2002. For each area in which your company is interested, please submit information concerning unleased hydrocarbon potential, future oil and gas price expectations, and other relevant information that your company uses in making OCS oil and gas leasing decisions. The MMS also requests industry commenters to provide additional information as specified below (on request such information will be treated confidentially as explained further below).

(1) Indicate the OCS planning area(s) where your company would be interested in acquiring oil and gas leases during the period 2002–2007. If you indicate more than one planning area, rank the areas in order of preference.

(2) Indicate the number and timing of lease sales in the period 2002–2007 that you believe would be appropriate for each planning area. If you suggest only one sale in a planning area, indicate whether that area should be considered for leasing early or late in the 5-year program schedule. If you suggest more than one lease sale in a planning area, indicate the preferred interval between sales.

Regarding the scope and timing of lease sales, the MMS would be especially interested in hearing innovative ideas for the Central and Western Gulf of Mexico Planning Areas, which have been subject to a long-running policy of annual areawide leasing. For example, we would like to know if commenters think it would be advantageous to offer blocks located in shallower waters on the shelf and those in deep water separately and at different intervals.

We also seek input from all respondents on ways that the leasing program can be designed to promote increased production of natural gas from the OCS. Natural gas is widely recognized to be the environmentally preferred fossil fuel and now accounts for about 25 percent of the nation's fuel needs. It is expected to remain a critical component of our Nation's energy needs well into the 21st century. The Energy Information Administration, National Petroleum Council, Gas Research Institute, and others forecast significant increases in future domestic gas demand—from about 22 trillion cubic feet (TCF) to as much as 29 TCF by 2010 and 31 TCF or more by 2015. Much of the increased production that will be needed is expected to come from the Rocky Mountain onshore region and from the Gulf of Mexico OCS, from deeper wells, deeper water, and nonconventional sources.

Currently, natural gas production from federal waters of the Gulf of Mexico contributes about 5.1 TCF annually (or about 23 percent) to domestic gas supplies. Given projected growth in domestic natural gas consumption, annual production from the OCS would need to increase significantly—from 5 TCF now to about 7 to 8 TCF or more within the next 15 years—to sustain its same contribution to domestic gas supplies. Although oil and natural gas production from the deep waters of the Gulf of Mexico is increasing, annual gas production from the shallower waters has been declining.

As recommended in a December 1999 National Petroleum Council report on natural gas, an Interagency Work Group on Natural Gas has been established to take a lead role in developing a natural gas strategy and resolving issues associated with future natural gas needs. Consistent with the MMS' participation in that work group, and with an OCS Policy Committee resolution calling for consideration of rising natural gas demand, we are examining new ways to increase OCS natural gas production in the Gulf of Mexico in an environmentally responsible manner. For example, we are currently looking at possible incentives that could be employed on a sale specific basis to foster and accelerate exploration for and production of natural gas both in the deep water and gas-prone areas of the continental shelf in the Gulf of Mexico. Some incentives, such as deepwater royalty relief, are expected to encourage increased development over the long term, but other incentives to help bring on new production sooner and meet near-term national increases in demand for natural gas are also needed.

Section 18(g) authorizes confidential treatment of privileged or proprietary information. In order to protect the confidentiality of privileged or proprietary information, include such information as an attachment to other comments submitted. On request the MMS will treat as confidential from the time of its receipt until 5 years after approval of the next leasing program the privileged or proprietary information that is attached to a response, subject to the standards of the Freedom of Information Act. However, the MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, or comments not containing such information. As noted above, you should place the label ''Contains Confidential Information'' on any envelope containing privileged or proprietary information that you wish to be treated as confidential.

Department of Commerce

Pursuant to section 18(f)(5) and implementing regulations at 30 CFR 256.20, the MMS requests information concerning relationships between affected states' coastal zone management programs and OCS oil and gas activities. We have sent a letter to the Secretary of Commerce soliciting such information.

Department of Energy

Pursuant to implementing regulations at 30 CFR 256.16, the MMS requests information concerning regional and national energy markets, OCS production goals, and oil and gas transportation networks. We have sent a letter to the Secretary of Energy soliciting such information.

EIS Preparation

Pursuant to section 102(2)(C) of NEPA, the MMS intends to prepare an EIS for the new 5-year OCS oil and gas leasing program for 2002–2007. This notice starts the scoping process for the EIS under 40 CFR 1501.7 and solicits information regarding issues and alternatives that should be evaluated in the EIS. The EIS will address the potential impacts of the adoption of the proposed 5-year program. The MMS requests respondents to focus your comments on the significant environmental issues attendant to OCS oil and gas leasing and development

and on alternative options for the size, timing and location of sales that should be evaluated in the EIS. Please label and submit your comments as indicated above. We will consider all comments we receive, regardless of how they are labeled, for the purpose of determining the scope of the EIS we plan to prepare. The individual knowledgeable about preparation of the EIS is Richard Wildermann, telephone (703) 787–1670.

Dated: December 6, 2000.

Walt Rosenbusch,

Director, Minerals Management Service.

BILLING CODE 4310–MR–U

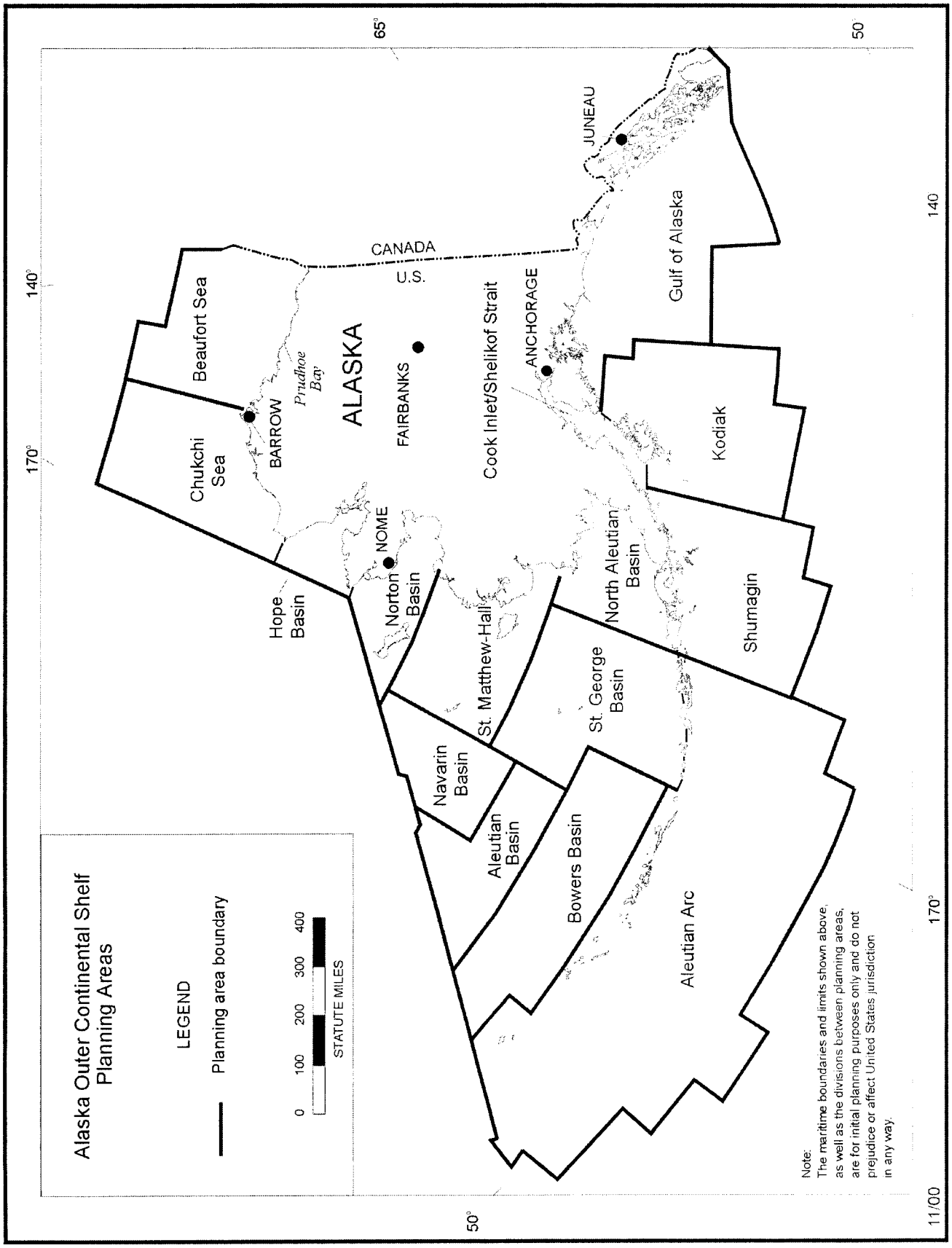

Figure 1. Alaska

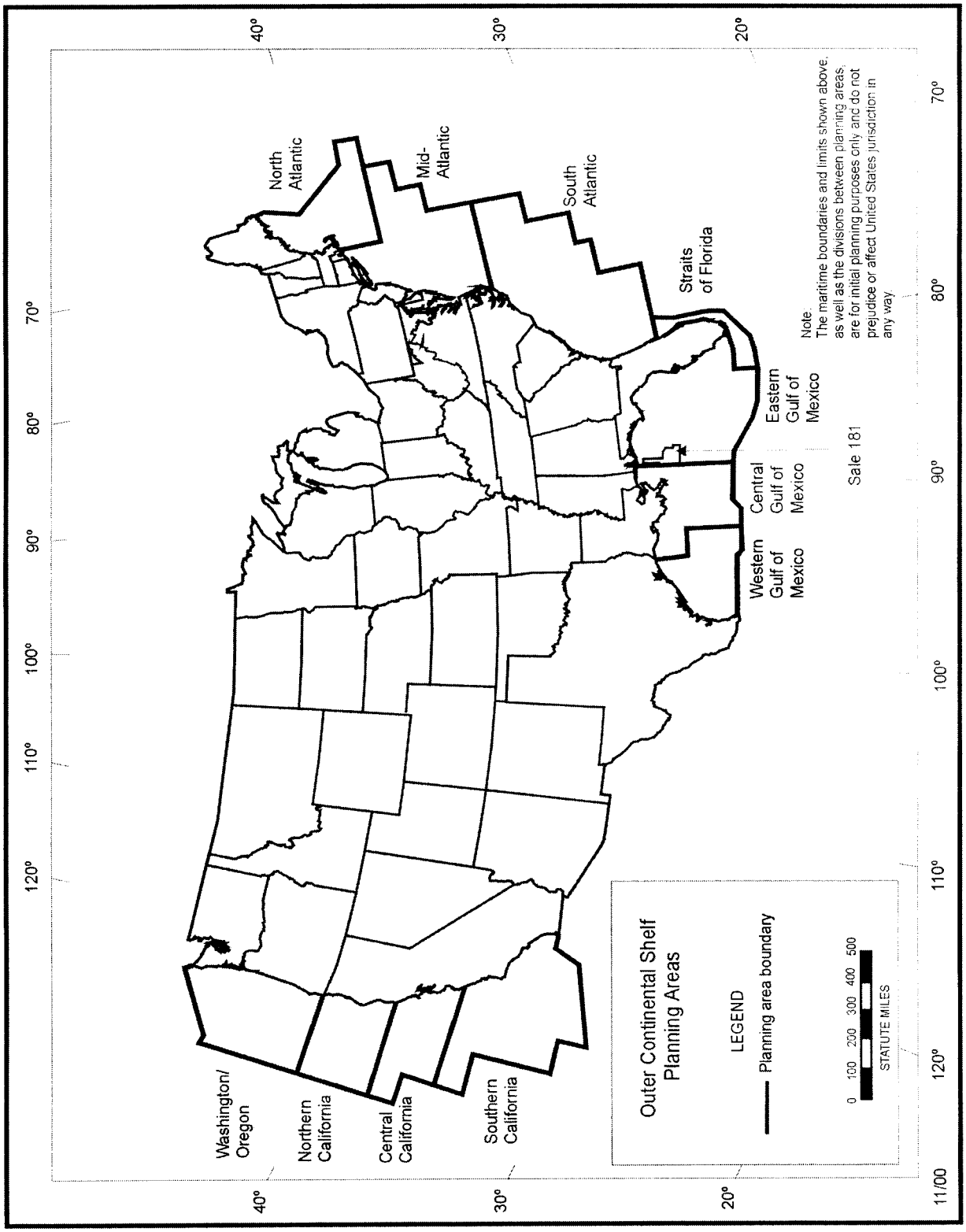

Figure 2. Lower 48 States

[FR Doc. 00–31629 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES00–54]

East Bay Municipal Utility District Supplemental Water Supply Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the East Bay Municipal Utility District (EBMUD) have prepared a joint FEIR/FEIS for the EBMUD Supplemental Water Supply Project. Reclamation and EBMUD prepared a draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the proposed project in November 1997, and a draft recirculated environmental impact report/supplemental environmental impact statement (REIR/SEIS) in October 2000. The FEIR/FEIS incorporates the DEIR/DEIS and REIR/SEIS, by reference, and includes all comments received on the DEIR/DEIS and the REIR/SEIS, and responses to those comments.

DATES: No decision will be made on the proposed action until at least 30 days after release of the FEIR/FEIS. After the 30-day waiting period, Reclamation will be preparing a Record of Decision (ROD) and EBMUD will be preparing a Notice of Determination, both of which will state the action that will be implemented and will discuss all factors leading to the respective decision of each agency. When an alternative is selected and the ROD is signed, Reclamation and EBMUD will resume negotiations on the amendatory contract to conform the contract terms to accurately reflect the selected alternative.

ADDRESSES: Copies of the FEIR/FEIS may be requested from Ms. Ann Reis, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS ı305, Oakland CA 94623, (510) 287–1197.

See ''Supplementary Information'' section for locations where copies of the FEIR/FEIS are available for inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Ladensack, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS ı305, Oakland CA 94623, (510) 287–1197; or Mr. Robert Schroeder, Environmental Specialist, Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom CA 95630, (916) 988–1707.

SUPPLEMENTARY INFORMATION: The federal action supported by this FEIS/FEIR is execution of an amendment to the 1970 contract. The amendatory contract will provide for a selection of one of the following alternative diversion sites under the identified and other appropriate conditions:

- A diversion of EBMUD's contractual supply at ''site 5'' on the American River (alternative 4) that must include the completion, prior to construction, of a satisfactory water storage strategy which will allow EBMUD to meet project purposes within the necessary flow pattern limitations. The storage strategy must include all necessary additional environmental documentation and be completed in a satisfactory manner. Additionally, the amendatory contract will include for ''site 5'' specific diversion rates and schedules (*e.g.*, Hodge flows for ''site 5''), which will be in effect for the duration of the contract, and will assure compliance with the State Wild and Scenic Rivers Act.
- A diversion of EBMUD's contractual supply at Freeport on the Sacramento River (alternative 6), instead of an American River diversion. The Freeport diversion would be structured to allow and encourage regional water management partnerships that will consider interim water supplies to be made available by regional partners.

The amendatory contract will prohibit deliveries of water diverted at Nimbus Dam as currently provided in Article 9(a) of the existing 1970 contract. However, if permitting and necessary agreements for another point of diversion are not completed by a certain date, EBMUD will have the right to deliveries as provided in Article 9(a) of the existing 1970 contract.

The amendatory contract will provide that in order for diversions to occur at any of the diversion sites identified above, all relevant state and federal laws and regulations must be complied with, and approval of the Contracting Officer is required. The Contracting Officer will initiate and complete consultation under Section 7 of the Endangered Species Act, and will comply with NEPA, as applicable, prior to approving any such diversions.

Included in the FEIR/FEIS, for clarity of reference only, is Appendix A. It is a draft amendatory contract that Reclamation circulated for public comment in December 1998. The REIR/SEIS and FEIR/FEIS refers to the provisions of the December 1998, draft amendatory contract. Although the entire 1998 draft amendatory contract is included in this FEIR/FEIS, Reclamation and EBMUD expect to replace this amendatory contract with a new draft amendatory contract that conforms to the provisions contained within the ROD.

Copies of the FEIR/FEIS are available for inspection at the following locations:

- East Bay Municipal Utility District at 375 Eleventh Street in Oakland CA 94607–4240
- Sacramento County Water Agency at 827 Seventh Street, Room 301 in Sacramento CA 95814
- City of Sacramento Utilities Department at 5770 Freeport Boulevard, Suite 100 in Sacramento CA 95822
- Sacramento County Clerk-Recorder's Office at 600 Eighth Street in Sacramento CA 95814
- Bureau of Reclamation, Office of Public Affairs at 2800 Cottage Way in Sacramento CA 95825
- Bureau of Reclamation, Folsom Area Office at 7794 Folsom Dam Road in Folsom CA 95630
- Library, Bureau of Reclamation at 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center in Denver CO 80225–0007
- Natural Resources Library, U.S. Department of the Interior at 1849 C Street NW, Main Interior Building in Washington DC 20240–0001
- Sacramento Central Library at 828 I Street in Sacramento CA 95814
- Lodi Public Library at 201 W. Locust Street in Lodi CA 95240
- Caesar Chavez Central Library at 605 N. El Dorado Street in Stockton CA 95202
- Science, Social Science & Government Documents Department, Oakland Public Library at 125 14th Street in Oakland CA 94612
- Contra Costa County Clerk's Office at 730 Las Juntas in Martinez CA 94553
- Alameda County Clerk's Office at 1225 Fallen Street in Oakland CA 94612
- San Joaquin County Clerk's Office at 24 S. Hunter, Room 304 in Stockton CA 95202
- Elk Grove Branch Library at 8962 Elk Grove Boulevard in Elk Grove CA 95624
- Rancho Cordova Community Library at 9845 Folsom Boulevard in Rancho Cordova CA 95827
- Herald Fire Station at 12746 Ivie Road in Herald CA 95638
- Galt Branch Library at 1000 Caroline Avenue in Galt CA 95632
- Tracy Public Library at 20 E. Eaton Avenue in Tracy CA 95376
- Amador Public Library at 25 East Main in Ione CA 95640

• Calaveras County Central Library at 891 Mountain Ranch Road in San Andreas CA 95249
• Community Development Department at 104 Oak Street in Brentwood CA 94513
• City Hall at 708 3rd Street in Brentwood CA 94513
• Brentwood Library at 751 3rd Street in Brentwood CA 94513
• Antioch Library in 501 West 18th Street in Antioch CA 95409
• Antioch Planning Department at Third and H Street in Antioch CA 94531
• City Clerk/Records Department at 65 Civic Avenue in Pittsburg CA 94565
• Pittsburg Library at 80 Power Avenue in Pittsburg CA 94565
• Contra Costa County Public Library at 1664. N. Broadway in Walnut Creek CA 94596

Dated: December 5, 2000.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 00–31606 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

U. S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects (Inv. No. 332–422)

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to submit comments

EFFECTIVE DATE: December 6, 2000.

SUMMARY: Following receipt of a request on November 27, 2000, from the United States Trade Representative (USTR), pursuant to authority under section 332(g) of the Tariff Act of 1930, the Commission instituted investigation No. 332–422, U.S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects.

FOR FURTHER INFORMATION CONTACT: Arona Butcher (202–205–3255), Office of Economics; or William Gearhart of the Office of the General Counsel (202–205–3091) for information on the legal aspects of this investigation. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background:

The USTR requested that the Commission conduct an investigation and provide advice as to the economic impact of a U.S.-Singapore FTA. As requested by USTR, the Commission's report on the investigation will include the following:

• A concise description of the Singapore economy, patterns of trade with the United States and other major trade partners, and the tariff and investment relationship between the United States and Singapore.
• A quantitative analysis of the likely trade and economic impact of a United States-Singapore FTA by sector.
• A supplementary qualitative analysis of the impact of the U.S.-Singapore FTA on product sectors to be identified by USTR.
• A discussion of potential trade and economic effects of the elimination of barriers to trade in services under the United States-Singapore FTA.
• A discussion of potential trade and economic effects of changes in intellectual property rights regimes under the United States-Singapore FTA.
• A discussion of potential trade and economic effects of changes in rules concerning foreign direct investment under the United States-Singapore FTA.

The Commission plans to submit its report, U.S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects on January 12, 2001. USTR indicated that portions of the report will be classified as confidential.

Written Submissions

The Commission does not plan to hold a public hearing in connection with this investigation. However, interested persons are invited to submit written statements concerning matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules (19 CFR 201.6). All written statements, except for confidential business information will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than December 20, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

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*).

Issued: December 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31712 Filed 12–11–00; 8:45 am]

BILLING CODE 7000–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 6, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtaining by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 693–4129 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
• Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission or responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Trade Act Participant Report (TAPR), a GPRA compliant data collection and reporting system.

OMB Number: 1205–0392.

Affected Public: State, Local, or Tribal government.; Federal Government.

Frequency: Quarterly.

Number of Respondents: 50.

Estimated Time Per Respondent: 47.5 Hours.

Total Burden Hours: 9,500.

Total Annualized capital/startup costs: $100,000.

Total annual costs (operating/maintaining systems or purchasing services): $225,000.

Description: A GPRA-compliant data collection and reporting system that supplies critical information on the operation of the Trade Adjustment Assistance program and the outcomes for participants.

Type of Review: New collection.

Agency: Employment and Training Administration.

Title: WIA Management Information and Reporting System.

OMB Number: 1205–0New.

Affected Public: State, Local, or Tribal government.

Form No.	Affected public	Number of respondents	Frequency	Average hours per response	Total burden hours
Individual records	State, local, or tribal govt	53	Annually	13,272	703,416
ETA 9090 annual report	State, local, or tribal govt	53	Annually	.75	2,385
Customer survey	Participants and employers	53,000	Quarterly, annually	.83	4,417
Customer survey	Agency administration	53	Quarterly, annually	500	26,500
Customer survey	Overhead	53	Quarterly, annually	154	8,162
ETA 9091 quarterly report	State, local, or tribal govt	53	Quarterly	16	3,392

Total Burden Hours: 748,272.

Total Annualized capital/startup costs: $919,213.

Total annual costs (operating/maintaining systems or purchasing services): $81,541,548.

Description: Selected standardized information pertaining to participants in WIA Title IB programs will be collected and reported for the purposes of general program oversight, evaluation, and performance assessment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–31599 Filed 12–11–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–141]

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of programs and activities receiving financial assistance from the National Aeronautics and Space Administration that are covered by Title IX of the Education Amendments of 1972, as amended.

SUMMARY: In accordance with subpart F of the final common rule for the enforcement of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, *et seq.* (''Title IX'') this notice lists those programs and activities that receive financial assistance from NASA and are covered by Title IX. Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F requires each Federal agency that awards Federal financial assistance to publish in the **Federal Register** a notice of the programs covered by the Title IX regulations within sixty (60) days after the effective date (September 29, 2000) of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by twenty (20) Federal agencies, including NASA, on August 30, 2000, (65 FR 52857–52895).

DATES: Effective December 12, 2000.

ADDRESSES: Address comments concerning this notice to the Office of Equal Opportunity Programs, Code EI, NASA Headquarters, 300 E Street, SW, Room 4W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Dalton, 202–358–0958, or TDD: 202–358–3748.

SUPPLEMENTARY INFORMATION: Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). This statute was modeled after Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, which prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance. The goal of Title IX is to ensure that Federal funds are not utilized for and do not support sex-based discrimination, and that individuals have equal opportunities, without regard to sex, to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs or activities.

List of Federal Financial Assistance Administered by the National Aeronautics and Space Administration to Which Title IX Applies

Note: All recipients of Federal financial assistance from GSA are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any. Failure to list a type of Federal assistance below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

1. Grants that provides funding to recipients for the purpose of supporting or stimulating research, education, and training, without substantial involvement by NASA in the activity

supported by the financial assistance. The four types of grants NASA provides are as follows:

a. *Research Grant*—A Research Grant is an agreement used to stimulate or support research in areas such as space science, earth science, the solar system, the universe, human activity in space, advanced aeronautics, and related technologies. Usually, research grants are in excess of one year in duration.

b. *Education Grant*—An Education Grant is an agreement that provides funds to an educational institution or other non-profit organizations for the purposes of:

(1) Capturing student interest and/or improving student performance in science, mathematics, technology, or related fields;

(2) Enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics, or technology;

(3) Supporting national educational support movements;

(4) Conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and

(5) Developing instructional materials (*e.g.,* teacher guides, printed publications, computer software, and videotapes) or networked information services for education.

c. *Training Grant*—A Training Grant is an agreement that provides funds to an educational institution or other non-profit organization solely by providing scholarships, fellowships, or stipends to students, teachers, and/or faculty. NASA training grants are awarded to colleges, universities, or other non-profit organizations; not to individual students, teachers, or faculty members. Students and faculty receiving direct support under a NASA Training Grant must be U.S. citizens.

d. *Facilities Grant*—A Facilities Grant is used to provide for the acquisition, construction, use, maintenance, and disposition of facilities. For the purposes of this type of grant, facilities means property used for production, maintenance, research, development, or testing.

2. Cooperative Agreements that is used to transfer something of value to recipients in order to support and stimulate research, with substantial involvement between NASA and the recipient during the performance of the activity.

Grants and Cooperative Agreements are made under the authority of NASA's organic statute, The National Aeronautics and Space Act of 1958 (Space Act), as amended, 42 U.S.C. 2451 *et seq.*, and the National Space Grant College and Fellowship Act, 42 U.S.C. 2486–2486l. In addition to the grants and cooperative agreements discussed above, the Space Act allows NASA to enter into other agreements in order to meet its wide-ranging mission and program requirements and objectives. Arrangements to receive a copy of NASA's federal financial assistance programs in an alternative format may be made by contacting the named individual.

George E. Reese,

Associate Administrator for Equal Opportunity Programs.

[FR Doc. 00–31490 Filed 12–11–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Status of Museum School Partnerships

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of Status of Museum School Partnership.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 12, 2001.

IMLS is particularly interested in comments that help the agency 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 agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Rebecca Danvers, Director of the Office or Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Dr. Danvers can be reached on Telephone: 202–606–2478 Fax: 202–606–1077 or at rdanvers@imls.gov.

SUPPLEMENTARY INFORMATION:

Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Status of Museum School Partnership.

OMB Number: n/a.

Agency Number: 3137.

Frequency: every five years.

Affected Public: Museums.

Number of Respondents: 600.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 300 hours.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: December 6, 2000.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 00–31511 Filed 12–11–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Evaluation Museum Leadership Initiatives

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed evaluation of its Museum Leadership Initiatives.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 12, 2001.

IMLS is particularly interested in comments that help the agency 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 agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Dr. Danvers can be reached on Telephone: 202–606–2478, Fax: 202–606–1077 or at rdanvers@imls.gov.

SUPPLEMENTARY INFORMATION:

Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Evaluation Museum Leadership Initiative.

OMB Number: N/A.

Agency Number: 3137.

Frequency: Once.

Affected Public: Museums.

Number of Respondents: 120.

Estimated Time Per Respondent: 1.

Total Burden Hours: 120.

Total Annualized capital/startup costs: 0.

Total Annual Costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: December 6, 2000.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 00–31512 Filed 12–11–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Cancellation of panel meeting.

SUMMARY: The National Endowment for the Humanities published a document in the **Federal Register** of November 28, 2000, concerning a Humanities Panel meeting. The date of the meeting is December 15, 2000. This meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson at (202) 606–8322.

Cancellation

In the **Federal Register** of November 28, 2000, on page 70951, in the second column, numbered paragraph 15, has been cancelled.

Dated: December 7, 2000.

Lauren Walsh,

Acting Advisory Committee Management Officer.

[FR Doc. 00–31646 Filed 12–11–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Correction.

SUMMARY: The National Endowment for the Humanities published a document in the **Federal Register** of November 28, 2000, concerning a Humanities Panel meeting. The date of the meeting is December 12, 2000 and the title of the program of this meeting was incorrect.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson at (202) 606–8322.

Correction

In the **Federal Register** of November 28, 2000, on page 70950, in the third column, numbered paragraph 11, correct the title of the Humanities Panel Program for December 12, 2000 to read:

Program: This meeting will review applications for *American History IV,* submitted to the Division of Preservation and Access at the July 1, 2000 deadline.

Dated: December 6, 2000.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–31582 Filed 12–11–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: January 21 and 22, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contract Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning Individual Investigator Award proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31487 Filed 12–11–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems

Date and Time: January 24, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning Individual Investigator Award proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Sensor Technologies for Civil and Mechanical Systems Individual Investigator Award Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31488 Filed 12–11–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: January 29 and 30, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning Sensing Initiative proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Sensor Technologies for Civil and Mechanical Systems Sensing Initiative Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31489 Filed 12–11–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Public Meeting on Standard Review Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion on the revised Standard Review Plan (SRP) Chapter 11 of NUREG 1520 for 10 CFR part 70. The revised SRP can be reviewed on the Internet at the following website: http://techconf.llnl.gov/cgi-bin/library?source=*& library=Part_70_lib&file.

The web site can also be reached by the following method:

1. Go to the main NRC web site at: http://www.nrc.gov.

2. Scroll down towards the bottom of that page and click on the word ''Rulemaking.''

3. Scroll down on the Rulemaking page till you see the words ''Technical Conference.'' Click on those words.

4. On the page titled ''Welcome to the NRC Technical Conference Forum,'' click where it says to participate in Technical Conferences.

5. Scroll down to the topic ''Draft Standard Review Plan and Guidance on Amendment to 10 CFR Part 70.''

6. Select ''Document Library.''

PURPOSE: This meeting will provide an opportunity to discuss any comments on the staff's recently revised Chapter 11.

DATES: The meeting is scheduled for Wednesday, December 20, 2000, from 1:00 p.m. to 4:30 p.m and Thursday, December 21, 2000, from 8:30 a.m. to 12:30 p.m. The meeting is open to the public.

ADDRESSES: Technical Training Center T–3B–43 at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Thomas Cox, Project Manager, Fuel Cycle Licensing Branch, Division of Fuel Cycle and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–8107, e-mail *thc@nrc.gov.*

Dated at Rockville, Maryland this 5th day of December, 2000.

For the Nuclear Regulatory Commission.

Myron Fliegel,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–31539 Filed 12–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of December 11, 18, 25, 2000, January 1, 8, and 15, 2001.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 11

There are no meetings scheduled for the Week of December 11.

Week of December 18—Tentative

Tuesday, December 19, 2000

9:30 a.m. Discussion of Management Issues (Closed—Ex. 2 and 6)

Wednesday, December 20, 2000

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on the Status of the Fuel Cycle Facility Oversight Program Revision (Public Meeting) (Contact: Walt Schwink, 301–415–7253)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1, 2001—Tentative

There are no meetings scheduled for the Week of January 1, 2001.

Week of January 8, 2001—Tentative

Tuesday, January 9, 2001

9:30 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Wednesday, January 10, 2001

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address— www.nrc.gov/live.html

Week of January 15, 2001—Tentative

Wednesday, January 17, 2001

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

Additional Information: By a vote of 5–0 on December 4, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Final Rule Amending the Fitness-for-Duty Rule'' be held on December 4, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *wmh@nrc.gov* or *dkw@nrc.gov*.

Dated: December 7, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–31714 Filed 12–08–00; 2:12 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1671]

Standard Review Plan for the Recertification of the Gaseous Diffusion Plants Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Because of significant changes to current U.S. Nuclear Regulatory Commission (NRC) decommissioning financial assurance guidance, NRC is offering the opportunity for additional public review and comment on the revised Section 14.0, ''Decommission Funding Plan and Financial Assurance Mechanisms,'' of the draft report NUREG–1671 entitled, ''Standard Review Plan for the Recertification of the Gaseous Diffusion Plants'' (GDPs).

DATES: Submit comments to the address listed below by January 11, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm during Federal workdays.

Draft NUREG–1671, without the revised Section 14.0, is available for inspection and copying for a fee at the NRC public document room (PDR), that is currently located at NRC's headquarters building, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. A copy of the draft revised Section 14.0 may also be obtained from the NRC's Internet website at: http://www.nrc.gov/NRC/NUREG/index.html or from the Agency's document management system, called ADAMS, at: http://www.nrc.gov/NRC/ADAMS/index.html

FOR FURTHER INFORMATION CONTACT: Timothy C. Johnson, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7299.

Dated at Rockville, Maryland, this 6th day of December 2000.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–31540 Filed 12–11–00; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Revision of OMB Circular No. A–130, Transmittal No. 4.

SUMMARY: The Office of Management and Budget issues a revision to Circular No. A–130, ''Management of Federal Information Resources,'' to implement provisions of the Clinger-Cohen Act (also known as ''Information Technology Management Reform Act of 1996'') and for other purposes. The revision modifies sections of the Circular concerning information systems and information technology management to follow more closely provisions of the Clinger-Cohen Act and OMB Circular A–11. These sections involve the acquisition, use, and disposal of information technology as a capital asset by the Federal government to improve the productivity, efficiency, and effectiveness of Federal programs.

OMB has issued previous guidance regarding the Clinger-Cohen Act

implementation, including OMB Memoranda M–96–20, ''Implementation of the Information Technology Management Reform Act of 1996;'' M–97–02, ''Funding Information Systems Investments;'' M–97–09, ''Interagency Support for Information Technology;'' M–97–15, ''Local Telecommunications Services Policy;'' and M–97–16, ''Information Technology Architectures.'' As a convenience to readers, these Memoranda are rescinded and their content incorporated into this Circular.

This revision also incorporates the content of three other OMB Memoranda. The guidance in Memorandum M–98–09, on the handbook requirement of the 1996 Electronic FOIA Amendments, has been incorporated into Appendix IV. The guidance on ''Implementing the Government Paperwork Elimination Act'' (OMB Memorandum M–00–10) has been inserted in Appendix II, and the principles on ''Incorporating and Funding Security in Information Systems Investments'' (OMB Memorandum M–00–07) have been incorporated into Section 8b(4). Appendix IV has been expanded to reflect these changes. With its incorporation into the Circular, Memoranda M–98–09 is rescinded.

OMB intends to review this Circular in 2001 for other revisions including Information Policy, Security and Privacy. At that time, we will review the Circular generally and update it to reflect plain language principles.

EFFECTIVE DATE: November 28, 2000.

ADDRESSES: You can find a full recompiled version of Circular A–130, including the changes made here along with the existing sections that have not changed on the Internet at the OMB web site, http://www.whitehouse.gov/OMB/circulars/index.html and at the CIO Council home page at http://cio.gov. You can also obtain a copy of OMB Circular No. A–11, including the supplement to Part 3, ''The Programming Guide,'' at the OMB web site and the CIO Council web site, or by calling the Budget Review and Concepts Division at OMB at 202–395–3172.

FOR FURTHER INFORMATION CONTACT: Tony Frater, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395–3785.

SUPPLEMENTARY INFORMATION:

Background

The Clinger-Cohen Act (also known as ''Information Technology Management Reform Act of 1996'') (Pub. L. 104–106, Division E, codified at 40 U.S.C. Chapter 25) grants to the Director of the Office of Management and Budget (OMB) authority to oversee the acquisition, use, and disposal of information technology by the Federal government, so as to improve the productivity, efficiency, and effectiveness of Federal programs. It supplements the information resources management (IRM) policies contained in the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) by establishing a comprehensive approach to improving the acquisition and management of agency information systems through work process redesign, and by linking planning and investment strategies to the budget process.

The Clinger-Cohen Act establishes clear accountability for IRM activities by creating agency Chief Information Officers (CIOs) with the authority and management responsibility necessary to advise agency heads on budget, program, and implementation issues concerning information technology. Among other responsibilities, CIOs oversee the design, development, and implementation of information systems. CIOs also monitor and evaluate system performance and advise agency heads whether to modify or terminate those systems. The Clinger-Cohen Act directs agencies to work together towards the common goal of using information technology to improve the productivity, effectiveness, and efficiency of Federal programs and to promote an interoperable, secure, and shared government-wide information resources infrastructure.

OMB Circular No. A–130, ''Management of Federal Information Resources,'' contains the policy framework for the management of Federal information resources. OMB last revised Circular A–130 on February 20, 1996 (61 FR 6428). To provide agencies with additional guidance on implementing the Clinger-Cohen Act, and for other purposes, OMB on April 13, 2000 (65 FR 19933) requested public comment on a proposed revision to this Circular. In addition to publishing the proposed revision in the **Federal Register**, OMB posted it on its public web site and sent copies of the proposal directly to Federal agencies.

Comments on the Proposed Revision to Circular A–130

In response to the request for public comment, OMB received specific comments from thirty four organizations and individuals. Federal agencies submitted the majority of comments, but non-profit organizations and concerned citizens also responded. Most comments proposed changes in clarity and detail. Where these comments added clarity and did not conflict with the substance of the provision in question, OMB incorporated them. Several organizations suggested changes to parts of the Circular that are not within the scope of this update of the Circular. OMB intends to review Circular No. A–130 for other revisions in 2001.

We describe below the principal substantive issues raised in the comments and our responses to them.

1. Comments Regarding the IT Capital Plan

A number of agencies wanted greater clarification regarding the distinction between the Information Technology (IT) Capital Plan and the Information Resources Management (IRM) Strategic Plan. We have updated the section outlining the IT Capital Plan and the IRM Strategic Plans. The new section describes in much greater detail, and in so doing clarifies, the different objectives of the two plans: The IT Capital Plan is operational in nature while the IRM Strategic Plan is a long range planning document.

The IRM Strategic Plan is the agency's IT vision or roadmap that will align its information resources with its business strategies and investment decisions. As an example, the IRM Strategic Plan might include the mission of the agency, key business processes, IT challenges, and guiding principles.

Conversely, the IT Capital Plan provides the justification for individual assets. A sample IT Capital Plan would include: the business case, expected benefits and costs, schedule, return on investment analysis, performance measures to evaluate the effectiveness of the investment, an examination of the alternative solutions, an acquisition strategy, and a discussion of how that system comports with IT security and privacy guidance.

The Government Performance and Results Act requires agencies to develop and submit to OMB agency Strategic Plans. Each agency submits this information annually along with its Performance Plans, as part of its budget submission to OMB. IRM Strategic Plans should support the Agency Strategic Plans, describing how information resources will help accomplish agency missions and ensuring that IRM decisions are integrated with organizational planning, budget, financial management, procurement, human resources management, and program decisions. The IT Capital Plan, on the other hand, supports the goals and missions identified in the IRM Strategic Plan, is an operational

document, and is updated twice yearly. The IT Capital Plan is largely comprised of existing documents that accompany the agency budget submission, as updated to reflect the Presidential budget request to Congress. The updated IT Capital Plan becomes the implementation plan for the budget year.

2. Comments on the Relationship Between the Agency Enterprise Architecture and the Agency Capital Planning and Investment Control Process

Several agencies wanted further elaboration on how the Enterprise Architecture (EA) and the capital planning and investment control (CPIC) process should work together. To address these comments, we include information on the EA within the body of Section 8b and elaborate on its relationship with the capital planning and investment control process. In doing so, information contained in the proposed Appendix II regarding the EA (April 13, 2000 (65 FR 19933)) has been incorporated into Section 8b(2). Appendix II is now dedicated to information on implementing the Government Paperwork Elimination Act.

We also add a discussion that describes how the EA documents linkages between mission needs, information sources and content, and information technology capabilities. The EA should inform the CPIC process by defining the technologies and information critical to operating an agency's business, and by creating a roadmap which enables the agency to transition from its current to its targeted state. The EA helps the agency respond to changing business needs, and ensures that potential solutions support the agency's targeted state. A proposed IT solution that does not comply with the EA should not be considered as a possible investment, and should not enter the CPIC process. The CPIC process helps select, control and evaluate investments that conform with the EA.

For example, during the select stage of capital planning an agency identifies and investigates different potential solutions for an investment. An agency then selects the option with the best business case. If any of these alternatives does not conform with the EA, the agency should drop it from consideration.

Another example might include an agency considering a new financial management system. The new system will require users to have a certain computing environment in order to operate the proposed system. During the select stage of capital planning, the agency should review the EA to determine if that proposed system design is appropriate for all of the necessary users in the organization. Users in field offices, for example, may not have the computing resources to use the system. The agency must consider the costs of upgrading these users' computing resources in the evaluation of this alternative. If the system is selected, the agency must incorporate, into the EA, its impact on business processes, data, security, etc.

There were also comments regarding how the Federal Enterprise Architecture (FEA) framework relates to the agency Enterprise Architecture. The Chief Information Officers Council created and currently maintains the FEA. We discuss the FEA in Appendix IV; agencies should address the Federal framework when developing the agency-specific EA. Collaboration among agencies who share a common business function promotes information sharing and is critical for the creation of a responsive, customer-focused electronic government.

3. Comments on the Threshold for a Major Information System

A few agencies wanted OMB to create a dollar threshold for major information systems. We did not adopt this recommendation.

Since 1985, OMB has included in Circular A–130 a definition for what is a ''major information system'' (50 FR 52730, 52735; December 24, 1985.) Since its revision in 1994, the Circular has defined ''major information system'' as follows: ''an information system that requires special management attention because of its importance to an agency mission; its high development, operating, or maintenance costs; or its significant role in the administration of agency programs, finances, property, or other resources'' (59 FR 37906, 37909; July 25, 1994). As this definition indicates, whether an information system qualifies as ''major'' depends on the particular circumstances of that system and its context within the agency's operations. Therefore, an information system that is ''major'' for one agency may not necessarily be ''major'' for another agency. This determination is to be made by the respective agency, and this determination necessarily involves an exercise of judgment.

Because there is significant variance among agency information technology budgets, we think it is inadvisable to establish a uniform, one-size-fits-all dollar threshold across all agencies, and therefore we have not done so.

4. Comments on Data Quality Concerns

A few organizations inquired about the quality of Federal data. Ensuring the quality of the information that the Federal Government disseminates to the public is very important. Federal agencies must take seriously their responsibility to ensure the quality of their data. OMB works with the agencies to ensure the quality of Federally disseminated information in several ways, including the review of collections of information under the Paperwork Reduction Act (to ensure that collections ''maximize usefulness''), statistical coordination and review, and the establishment in this Circular of general policies for information dissemination. The current Analysis of Key Sections in Appendix IV stresses the importance of data quality protections. OMB intends to review data quality policies in 2001 and to issue new guidance as appropriate.

5. Comments on Computer Security

Several agencies inquired about changes regarding computer security and privacy. OMB Memorandum M–00–07 ''Incorporating and Funding Security in Information Systems Investments'' (February 28, 2000) is incorporated into Section 8b(3).

Of special note, Title X, Subtitle G, ''Government Information Security Reform'' of the FY 2001 Defense Authorization Act (Pub. L. 106–398), was enacted during the final stages of revision to this Circular. In order to include these reforms, and other important computer security modifications, we plan more substantive changes when we revise Circular A–130 in 2001. During the upcoming revision process, we will take into consideration the comments that we have received on computer security.

6. Comments on Information Dissemination and Information Resources Management

One organization suggested we add to Section 9 ''Assignment of Responsibilities'' a provision to reflect Section 5403 of the Clinger Cohen Act (40 U.S.C. 1503). Section 5403 requires agencies, in the designing of IT systems for disseminating information to the public, to reasonably ensure that an index of information disseminated by the system is included in the directory, created by the Superintendent of Documents pursuant to 44 U.S.C. 4101. OMB has included a new Section 9a(14) to reiterate Section 5403.

One organization expressed concern that language in Appendix IV (Sections 8a(5) and 8a(6)) describing agency requirements for the Government Information Locator Services (GILS) could lead to agency non-compliance with those requirements. OMB expects all agencies to comply with the information dissemination provisions of the PRA and of the E–FOIA Amendments to the Freedom of Information Act. In this regard, in accordance with the PRA (44 U.S.C. 3511) and the FOIA (5 U.S.C. 552(g)), each agency must develop and make available to the public (including through the Government Information Locator Service) an inventory that includes the agency's major information systems.

In addition, with respect to the ''information resources management'' responsibilities of each agency under the PRA (44 U.S.C. 3506(b)), OMB continues to believe that an agency needs to focus its management attention on its ''major'' information systems. For this reason, an agency's management of its information resources is best improved by having the agency maintain an inventory of its ''information resources'' that includes those major information systems (rather than all of the agency's information systems).

In sum, in addition to reflecting the passage of the E–FOIA Amendments, the revisions to Section 9 also clarify the agency obligations under the PRA and FOIA. These revisions reiterate that each agency must maintain and disseminate an inventory of its major information systems (these systems may be electronic or paper—the Circular's definition of ''major information systems'' is format neutral). The revisions also clarify that, under the ''information resources management'' responsibilities in Section 3506(b)(4) of the PRA, each agency needs to maintain an inventory of its other ''information resources'' (such as personnel and funding) at the level of detail that the agency's managers believe is most appropriate for use in the agency's management of its information resources.

Because this revised Circular A–130 is not being reprinted here in its entirety, changes from the previous version are provided below. A copy of the recompiled Circular (consisting of the February 1996 Circular and the amendments in this notice) is available on OMB's web site (see **ADDRESSES** above).

Section 3. Authorities. This section is amended to cite and to incorporate changes necessitated by the Clinger-Cohen Act, the Government Performance and Results Act (GPRA), and Executive Order 13011.

Section 5. Background. A discussion of the basic principles and goals of the Clinger-Cohen Act is added.

Section 6. Definitions. The terms ''Chief Information Officers Council'' and ''Information Technology Resources Board'' are introduced to reflect the interagency support structures established by Executive Order 13011. The terms ''executive agency'' and ''national security system'' are introduced to reflect the definitions found in the Clinger-Cohen Act. The term ''information technology'' is amended to reflect definitional changes made by the Clinger-Cohen Act, and is supplemented by the limiting term ''national security system'' to clearly identify those systems to which the Circular applies. The term ''capital planning and investment control process'' is introduced to assist agencies in the reporting requirements of the Clinger-Cohen Act.

Section 7. Basic Considerations and Assumptions. The existing basic considerations and assumptions are supplemented with a modified subsection (i) and new subsection (r) to reflect the relevant goals and purposes of the Clinger-Cohen Act and Executive Order 13011.

Section 8b. Policy. Information Systems and Information Technology Management. This section is substantially revised to implement the policies of the Clinger-Cohen Act and the principles of Executive Order 13011. Previous subsections (8b(1)–8b(5)) have been merged and revised to integrate requirements under Clinger-Cohen Act, the Government Performance and Results Act (Public Law 103–62), and revisions to OMB Circular A–11.

Section 9a, All Federal Agencies, is changed to reflect the new Chief Information Officer (CIO) position created by the Clinger-Cohen Act, and reflects developments since the Circular was last revised in February 1996.

Section 9b, Section 9c, Section 9e, Section 9h, are revised to reflect responsibilities described in the Clinger-Cohen Act and Executive Order 13011.

Accordingly, OMB revises Circular A–130 as set forth below, and rescinds OMB Memoranda M–96–20, M–97–02, M–97–09, M–97–15, M–97–16, and M–98–09.

Jacob J. Lew,

Director.

1. Section 3, ''Authorities,'' is revised to read as follows:

3. **Authorities:** OMB issues this Circular pursuant to the Paperwork Reduction Act (PRA) of 1980, as amended by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35); the Clinger-Cohen Act (also known as ''Information Technology Management Reform Act of 1996'') (Pub. L. 104–106, Division E); the Privacy Act, as amended (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 *et seq.*); the Federal Property and Administrative Services Act, as amended (40 U.S.C. 487); the Computer Security Act of 1987 (Pub. L. 100–235); the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11); the Government Performance and Results Act of 1993(GPRA); the Office of Federal Procurement Policy Act (41 U.S.C. Chapter 7); the Government Paperwork Elimination Act of 1998 (Pub. L. 105–277, Title XVII), Executive Order No. 12046 of March 27, 1978; Executive Order No. 12472 of April 3, 1984; and Executive Order No. 13011 of July 17, 1996.

2. Section 5, ''Background,'' is revised to read as follows:

5. Background: The Clinger-Cohen Act supplements the information resources management policies contained in the PRA by establishing a comprehensive approach for executive agencies to improve the acquisition and management of their information resources, by:

1. Focusing information resource planning to support their strategic missions;

2. Implementing a capital planning and investment control process that links to budget formulation and execution; and

3. Rethinking and restructuring the way they do their work before investing in information systems.

The PRA establishes a broad mandate for agencies to perform their information resources management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the PRA requires that the Director of OMB develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information resources management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

3. Section 6, ''Definitions,'' is amended by adding five new definitions (c,d,f,t, and v, below); revising the definition of ''information technology''; and redesignating the remaining definitions accordingly:

c. The term ''capital planning and investment control process'' means a management process for ongoing identification, selection, control, and evaluation of investments in information resources. The process links budget formulation and execution, and is focused on agency missions and achieving specific program outcomes.

d. The term ''Chief Information Officers Council'' (CIO Council) means the Council

established in Section 3 of Executive Order 13011.

f. The term ''executive agency'' has the meaning defined in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

s. The term ''information technology'' means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product. The term ''information technology'' includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. The term ''information technology'' does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract. The term ''information technology'' does not include national security systems as defined in the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

t. The term ''Information Technology Resources Board'' (Resources Board) means the board established by Section 5 of Executive Order 13011.

v. The term ''national security system'' means any telecommunications or information system operated by the United States Government, the function, operation, or use of which (1) involves intelligence activities; (2) involves cryptologic activities related to national security; (3) involves command and control of military forces; (4) involves equipment that is an integral part of a weapon or weapons system; or (5) is critical to the direct fulfillment of military or intelligence missions, but excluding any system that is to be administrative and business applications (including payroll, finance, logistics, and personnel management applications). The policies and procedures established in this Circular will apply to national security systems in a manner consistent with the applicability and related limitations regarding such systems set out in Section 5141 of the Clinger-Cohen Act (Pub. L. 104–106, 40 U.S.C. 1451). Applicability of Clinger-Cohen Act to national security systems shall include budget document preparation requirements set forth in OMB Circular A–11. The resultant budget document may be classified in accordance with the provisions of Executive Order 12958.

4. Section 7, ''Basic Considerations and Assumptions,'' is amended by revising Section 7i, and by adding Section 7r, as follows:

i. Strategic planning improves the operation of government programs. The agency strategic plan will shape the redesign of work processes and guide the development and maintenance of an Enterprise Architecture and a capital planning and investment control process. This management approach promotes the appropriate application of Federal information resources.

r. The Chief Information Officers Council and the Information Technology Resources Board will help in the development and operation of interagency and interoperable shared information resources to support the performance of government missions.

5. Section 8b is revised to read as follows:

b. How Will Agencies Manage Information Systems and Information Technology?

(1) How will agencies use capital planning and investment control process?

Agencies must establish and maintain a capital planning and investment control process that links mission needs, information, and information technology in an effective and efficient manner. The process will guide both strategic and operational IRM, IT planning, and the Enterprise Architecture by integrating the agency's IRM plans, strategic and performance plans prepared pursuant to the Government Performance and Results Act of 1993, financial management plans prepared pursuant to the Chief Financial Officer Act of 1990 (31 U.S.C. 902a5), acquisition under the Federal Acquisition Streamlining Act of 1994, and the agency's budget formulation and execution processes. The capital planning and investment control process includes all stages of capital programming, including planning, budgeting, procurement, management, and assessment.

As outlined below, the capital planning and investment control process has three components: selection, control, and evaluation. The process must be iterative, with inputs coming from all of the agency plans and the outputs feeding into the budget and investment control processes. The goal is to link resources to results (for further guidance on Capital Planning refer to OMB Circular A–11). The agency's capital planning and investment control process must build from the agency's current Enterprise Architecture (EA) and its transition from current architecture to target architecture. The Capital Planning and Investment Control processes must be documented, and provided to OMB consistent with the budget process. The Enterprise Architecture must be documented and provided to OMB as significant changes are incorporated.

(a) What plans are associated with the capital planning and investment control process?

In the capital planning and investment control process, there are two separate and distinct plans that address IRM and IT planning requirements for the agency. The IRM Strategic Plan is strategic in nature and addresses all information resources management of the agency. Agencies must develop and maintain the agency Information Resource Management Strategic Plan (IRM) as required by 44 U.S.C. 3506(b)(2). IRM Strategic Plans should support the agency Strategic Plan required in OMB Circular A–11, provide a description of how information resources management activities help accomplish agency missions, and ensure that IRM decisions are integrated with organizational planning, budget, procurement, financial management, human resources management, and program decisions.

The IT Capital Plan is operational in nature, supports the goals and missions identified in the IRM Strategic Plan, is a living document, and must be updated twice yearly. This IT Capital Plan is the implementation plan for the budget year. The IT Capital Plan should also reflect the goals of the agency's Annual Performance Plan, the agency's Government Paperwork Elimination Act (GPEA) Plan, the agency's EA, and agency's business planning processes. The IT Capital Plan must be submitted annually to OMB with the agency budget submission annually. The IT Capital Plan must include the following components:

(i) A component, derived from the agency's capital planning and investment control process under OMB Circular A–11, Section 300 and the OMB Capital Programming Guide, that specifically includes all IT Capital Asset Plans for major information systems or projects. This component must also demonstrate how the agency manages its other IT investments, as required by the Clinger-Cohen Act.

(ii) A component that addresses two other sections of OMB Circular A–11:a section for Information on Financial Management, including the Report on Financial Management Activities and the Agency's Financial Management Plan, and a section entitled Information Technology, including the Agency IT Investment Portfolio.

(iii) A component, derived from the agency's capital planning and investment control process, that demonstrates the criteria it will use to select the investments into the portfolio, how it will control and manage the investments, and how it will evaluate the investments based on planned performance versus actual accomplishments.

(iv) A component that includes a summary of the security plan from the agency's five-year plan as required by the PRA and Appendix III of this Circular. The plan must demonstrate that IT projects and the EA include security controls for components, applications, and systems that are consistent with the agency's Enterprise Architecture; include a plan to manage risk; protect privacy and confidentiality; and explain any planned or actual variance from National Institute of Standards and Technology (NIST) security guidance.

(b) What must an agency do as part of the selection component of the capital planning process?

It must:

(i) Evaluate each investment in information resources to determine whether the investment will support core mission functions that must be performed by the Federal government;

(ii) Ensure that decisions to improve existing information systems or develop new information systems are initiated only when no alternative private sector or governmental source can efficiently meet the need;

(iii) Support work processes that it has simplified or otherwise redesigned to reduce costs, improve effectiveness, and make maximum use of commercial, off-the-shelf technology;

(iv) Reduce risk by avoiding or isolating custom designed components, using components that can be fully tested or prototyped prior to production, and ensuring involvement and support of users;

(v) Demonstrate a projected return on the investment that is clearly equal to or better than alternative uses of available public resources. The return may include improved mission performance in accordance with GPRA measures, reduced cost, increased quality, speed, or flexibility; as well as increased customer and employee satisfaction. The return should reflect such risk factors as the project's technical complexity, the agency's management capacity, the likelihood of cost overruns, and the consequences of under- or non-performance. Return on investment should, where appropriate, reflect actual returns observed through pilot projects and prototypes;

(vi) Prepare and update a benefit-cost analysis (BCA) for each information system throughout its life cycle. A BCA will provide a level of detail proportionate to the size of the investment, rely on systematic measures of mission performance, and be consistent with the methodology described in OMB Circular No. A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'';

(vii) Prepare and maintain a portfolio of major information systems that monitors investments and prevents redundancy of existing or shared IT capabilities. The portfolio will provide information demonstrating the impact of alternative IT investment strategies and funding levels, identify opportunities for sharing resources, and consider the agency's inventory of information resources;

(viii) Ensure consistency with Federal, agency, and bureau Enterprise architectures, demonstrating such consistency through compliance with agency business requirements and standards, as well as identification of milestones, as defined in the EA;

(ix) Ensure that improvements to existing information systems and the development of planned information systems do not unnecessarily duplicate IT capabilities within the same agency, from other agencies, or from the private sector;

(x) Ensure that the selected system or process maximizes the usefulness of information, minimizes the burden on the public, and preserves the appropriate integrity, usability, availability, and confidentiality of information throughout the life cycle of the information, as determined in accordance with the PRA and the Federal Records Act. This portion must specifically address the planning and budgeting for the information collection burden imposed on the public as defined by 5 CFR 1320;

(xi) Establish oversight mechanisms, consistent with Appendix III of this Circular, to evaluate systematically and ensure the continuing security, interoperability, and availability of systems and their data;

(xii) Ensure that Federal information system requirements do not unnecessarily restrict the prerogatives of state, local and tribal governments;

(xiii) Ensure that the selected system or process facilitates accessibility under the Rehabilitation Act of 1973, as amended.

(c) What must an agency do as part of the control component of the capital planning process?

It must:

(i) Institute performance measures and management processes that monitor actual performance compared to expected results. Agencies must use a performance based management system that provides timely information regarding the progress of an information technology investment. The system must also measure progress towards milestones in an independently verifiable basis, in terms of cost, capability of the investment to meet specified requirements, timeliness, and quality;

(ii) Establish oversight mechanisms that require periodic review of information systems to determine how mission requirements might have changed, and whether the information system continues to fulfill ongoing and anticipated mission requirements. These mechanisms must also require information regarding the future levels of performance, interoperability, and maintenance necessary to ensure the information system meets mission requirements cost effectively;

(iii) Ensure that major information systems proceed in a timely fashion towards agreed-upon milestones in an information system life cycle. Information systems must also continue to deliver intended benefits to the agency and customers, meet user requirements, and identify and offer security protections;

(iv) Prepare and update a strategy that identifies and mitigates risks associated with each information system;

(iv) Ensure that financial management systems conform to the requirements of OMB Circular No. A–127, ''Financial Management Systems;''

(v) Provide for the appropriate management and disposition of records in accordance with the Federal Records Act.

(vi) Ensure that agency EA procedures are being followed. This includes ensuring that EA milestones are reached and documentation is updated as needed.

(d) What must an agency do as part of the evaluation component of the capital planning process?

It must:

(i) Conduct post-implementation reviews of information systems and information resource management processes to validate estimated benefits and costs, and document effective management practices for broader use;

(ii) Evaluate systems to ensure positive return on investment and decide whether continuation, modification, or termination of the systems is necessary to meet agency mission requirements.

(iii) Document lessons learned from the post-implementation reviews. Redesign oversight mechanisms and performance levels to incorporate acquired knowledge.

(iv) Re-assess an investment's business case, technical compliance, and compliance against the EA.

(v) Update the EA and IT capital planning processes as needed.

(2) The Enterprise Architecture

Agencies must document and submit their initial EA to OMB. Agencies must submit updates when significant changes to the Enterprise Architecture occur.

(a) What is the Enterprise Architecture?

An EA is the explicit description and documentation of the current and desired relationships among business and management processes and information technology. It describes the ''current architecture'' and ''target architecture'' to include the rules and standards and systems life cycle information to optimize and maintain the environment which the agency wishes to create and maintain by managing its IT portfolio. The EA must also provide a strategy that will enable the agency to support its current state and also act as the roadmap for transition to its target environment. These transition processes will include an agency's capital planning and investment control processes, agency EA planning processes, and agency systems life cycle methodologies. The EA will define principles and goals and set direction on such issues as the promotion of interoperability, open systems, public access, compliance with GPEA, end user satisfaction, and IT security. The agency must support the EA with a complete inventory of agency information resources, including personnel, equipment, and funds devoted to information resources management and information technology, at an appropriate level of detail. Agencies must implement the EA consistent with following principles:

(i) Develop information systems that facilitate interoperability, application portability, and scalability of electronic applications across networks of heterogeneous hardware, software, and telecommunications platforms;

(ii) Meet information technology needs through cost effective intra-agency and interagency sharing, before acquiring new information technology resources; and

(iii) Establish a level of security for all information systems that is commensurate to the risk and magnitude of the harm resulting from the loss, misuse, unauthorized access to, or modification of the information stored or flowing through these systems.

(b) How do agencies create and maintain the EA?

As part of the EA effort, agencies must use or create an Enterprise Architecture Framework. The Framework must document linkages between mission needs, information content, and information technology capabilities. The Framework must also guide both strategic and operational IRM planning.

Once a framework is established, an agency must create the EA. In the creation of an EA, agencies must identify and document:

(i) Business Processes—Agencies must identify the work performed to support its mission, vision and performance goals. Agencies must also document change agents, such as legislation or new technologies that will drive changes in the EA.

(ii) Information Flow and Relationships—Agencies must analyze the information utilized by the agency in its business processes, identifying the information used and the movement of the information. These information flows indicate where the information is needed and how the information is shared to support mission functions.

(iii) Applications—Agencies must identify, define, and organize the activities that capture, manipulate, and manage the business information to support business processes. The EA also describes the logical dependencies and relationships among business activities.

(iv) Data Descriptions and Relationships—Agencies must identify how data is created, maintained, accessed, and used. At a high level, agencies must define the data and describe the relationships among data elements used in the agency's information systems.

(v) Technology Infrastructure—Agencies must describe and identify the functional characteristics, capabilities, and interconnections of the hardware, software, and telecommunications.

(c) What are the Technical Reference Model and Standards Profile?

The EA must also include a Technical Reference Model (TRM) and Standards Profile.

(i) The TRM identifies and describes the information services (such as database, communications, intranet, etc.) used throughout the agency.

(ii) The Standards Profile defines the set of IT standards that support the services articulated in the TRM. Agencies are expected to adopt standards necessary to support the entire EA, which must be enforced consistently throughout the agency.

(iii) As part of the Standards Profile, agencies must create a Security Standards Profile that is specific to the security services specified in the EA and covers such services as identification, authentication, and non-repudiation; audit trail creation and analysis; access controls; cryptography management; virus protection; fraud prevention; detection and mitigation; and intrusion prevention and detection.

(3) How Will Agencies Ensure Security in Information Systems?

Agencies must incorporate security into the architecture of their information and systems to ensure that security supports agency business operations and that plans to fund and manage security are built into life-cycle budgets for information systems.

(a) To support more effective agency implementation of both agency computer security and critical infrastructure protection programs, agencies must implement the following:

(i) Prioritize key systems (including those that are most critical to agency operations);

(ii) Apply OMB policies and, for non-national security applications, NIST guidance to achieve adequate security commensurate with the level of risk and magnitude of harm;

(b) Agencies must make security's role explicit in information technology investments and capital programming. Investments in the development of new or the continued operation of existing information systems, both general support systems and major applications must:

(i) Demonstrate that the security controls for components, applications, and systems are consistent with, and an integral part of, the EA of the agency;

(ii) Demonstrate that the costs of security controls are understood and are explicitly incorporated into the life-cycle planning of the overall system in a manner consistent with OMB guidance for capital programming;

(iii) Incorporate a security plan that complies with Appendix III of this Circular and in a manner that is consistent with NIST guidance on security planning;

(iv) Demonstrate specific methods used to ensure that risks and the potential for loss are understood and continually assessed, that steps are taken to maintain risk at an acceptable level, and that procedures are in place to ensure that controls are implemented effectively and remain effective over time;

(v) Demonstrate specific methods used to ensure that the security controls are commensurate with the risk and magnitude of harm that may result from the loss, misuse, or unauthorized access to or modification of the system itself or the information it manages;

(vi) Identify additional security controls that are necessary to minimize risk to and potential loss from those systems that promote or permit public access, other externally accessible systems, and those systems that are interconnected with systems over which

program officials have little or no control;

(vii) Deploy effective security controls and authentication tools consistent with the protection of privacy, such as public-key based digital signatures, for those systems that promote or permit public access;

(viii) Ensure that the handling of personal information is consistent with relevant government-wide and agency policies;

(ix) Describe each occasion the agency decides to employ standards and guidance that are more stringent than those promulgated by NIST to ensure the use of risk-based cost-effective security controls for non-national security applications;

(c) OMB will consider for new or continued funding only those system investments that satisfy these criteria. New information technology investments must demonstrate that existing agency systems also meet these criteria in order to qualify for funding.

(4) How Will Agencies Acquire Information Technology?

Agencies must:

(a) Make use of adequate competition, allocate risk between government and contractor, and maximize return on investment when acquiring information technology;

(b) Structure major information systems into useful segments with a narrow scope and brief duration. This should reduce risk, promote flexibility and interoperability, increase accountability, and better match mission need with current technology and market conditions;

(c) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented through pilot projects or prototypes; and

(d) Ensure accessibility of acquired information technology pursuant to the Rehabilitation Act of 1973, as amended (Pub. L. 105–220, 29 U.S.C. 794d).

6. Section 9a is revised to read as follows:

a. All Federal Agencies. The head of each agency must:

1. Have primary responsibility for managing agency information resources;

2. Ensure that the agency implements appropriately all of the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB;

3. Appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who must report directly to the agency head to carry out the responsibilities of the agencies listed in the Paperwork Reduction Act (44 U.S.C. 3506), the Clinger Cohen Act (40 U.S.C. 1425(b) & (c)), as well as Executive Order 13011. The head of the agency must consult with the Director of OMB prior to appointing a Chief Information Officer, and will advise the Director on matters regarding the authority, responsibilities, and organizational resources of the Chief Information Officer. For purposes of this paragraph, military departments and the Office of the Secretary of Defense may each appoint one official. The Chief Information Officer must, among other things:

(a) Be an active participant during all agency strategic management activities, including the development, implementation, and maintenance of agency strategic and operational plans;

(b) Advise the agency head on information resource implications of strategic planning decisions;

(c) Advise the agency head on the design, development, and implementation of information resources.

(i) Monitor and evaluate the performance of information resource investments through a capital planning and investment control process, and advise the agency head on whether to continue, modify, or terminate a program or project;

(ii) Advise the agency head on budgetary implications of information resource decisions; and

(d) Be an active participant throughout the annual agency budget process in establishing investment priorities for agency information resources;

4. Direct the Chief Information Officer to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the Chief Information Officer must consider alleged instances of agency failure to comply with this Circular, and recommend or take appropriate corrective action. The Chief Information Officer will report instances of alleged failure and their resolution annually to the Director of OMB, by February 1st of each year.

5. Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

6. Develop agency policies and procedures that provide for timely acquisition of required information technology;

7. Maintain the following, as required by the Paperwork Reduction Act (44 U.S.C. 3506(b)(4) and 3511) and the Freedom of Information Act (5 U.S.C. 552(g)): an inventory of the agency's major information systems, holdings, and dissemination products; an agency information locator service; a description of the agency's major information and record locator systems; an inventory of the agency's other information resources, such as personnel and funding (at the level of detail that the agency determines is most appropriate for its use in managing the agency's information resources); and a handbook for persons to obtain public information from the agency pursuant to these Acts.

8. Implement and enforce applicable records management policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

9. Identify to the Director of OMB any statutory, regulatory, and other impediments to efficient management of Federal information resources, and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

10. Assist OMB in the performance of its functions under the PRA, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

11. Ensure that the agency:

(a) cooperates with other agencies in the use of information technology to improve the productivity, effectiveness, and efficiency of Federal programs;

(b) promotes a coordinated, interoperable, secure, and shared government wide infrastructure that is provided and supported by a diversity of private sector suppliers; and

(c) develops a well-trained corps of information resource professionals.

12. Use the guidance provided in OMB Circular A–11, ''Planning, Budgeting, and Acquisition of Fixed Assets,'' to promote effective and efficient capital planning within the organization;

13. Ensure that the agency provides budget data pertaining to information resources to OMB, consistent with the requirements of OMB Circular A–11,

14. Ensure, to the extent reasonable, that in the design of information systems with the purpose of disseminating information to the public, an index of information disseminated by the system will be included in the directory created by the Superintendent of Documents pursuant to 41 U.S.C. 4101. (Nothing in this paragraph authorizes the dissemination of

information to the public unless otherwise authorized.)

15. Permit, to the extent practicable, the use of one agency's contract by another agency or the award of multi-agency contracts, provided the action is within the scope of the contract and consistent with OMB guidance; and

16. As designated by the Director of OMB, act as executive agent for the government-wide acquisition of information technology.

7. Section 9b is revised to read as follows:

b. Department of State. The Secretary of State must:

1. Advise the Director of OMB on the development of United States positions and policies on international information policy and technology issues affecting Federal government activities and the development of international information technology standards; and

2. Be responsible for liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on all matters related to information resources management, including federal information technology. The Secretary must also ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international standards and recommendations affecting information technology. These responsibilities may also require the Secretary to consult, as appropriate, with affected domestic agencies, organizations, and other members of the public.

8. Section 9c is amended by revising subparagraph 1, to read as follows:

c. Department of Commerce. The Secretary of Commerce must:

1. Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology, while taking into consideration the recommendations of the agencies and the CIO Council;

9. Section 9e is revised to read as follows:

e. General Services Administration. The Administrator of General Services must:

1. Continue to manage the FTS2001 program and coordinate the follow-up to that program, on behalf of and with the advice of agencies;

2. Develop, maintain, and disseminate for the use of the Federal community (as requested by OMB or the agencies) recommended methods and strategies for the development and acquisition of information technology;

3. Conduct and manage outreach programs in cooperation with agency managers;

4. Be a liaison on information resources management (including Federal information technology) with State and local governments. GSA must also be a liaison with non-governmental international organizations, subject to prior consultation with the Secretary of State to ensure consistency with the overall United States foreign policy objectives;

5. Support the activities of the Secretary of State for liaison, consultation, and negotiation with intergovernmental organizations on information resource management matters;

6. Provide support and assistance to the CIO Council and the Information Technology Resources Board.

7. Manage the Information Technology Fund in accordance with the Federal Property and Administrative Services Act, as amended;

10. Section 9h is amended by removing subparagraph (10), redesignating subparagraphs (11) and (12) as (10) and (11), and adding the following new subparagraphs:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

12. Evaluate agency information resources management practices and programs and, as part of the budget process, oversee agency capital planning and investment control processes to analyze, track, and evaluate the risks and results of major capital investments in information systems;

13. Notify an agency if OMB believes that a major information system project requires outside assistance;

14. Provide guidance on the implementation of the Clinger-Cohen Act and on the management of information resources to the executive agencies, to the CIO Council and to the Information Technology Resources Board; and

15. Designate one or more heads of executive agencies as executive agent for government-wide acquisitions of information technology.

11. Appendix II to Circular A–130, which was formerly reserved, now incorporates OMB's guidance on the Government Paperwork Elimination Act (OMB Memorandum M–00–10; April 25, 2000); published at 65 FR 25508–25521 (May 2, 2000).

In addition to referencing 65 FR 25508–25521, readers may also find a full text of the GPEA guidance on the Internet at the OMB web site, http://www.whitehouse.gov/OMB/memoranda/index.html and at the CIO Council home page at http://cio.gov.

12. Appendix IV of Circular A–130, is amended by revising section 1 and 2, and by adding supplemental discussions regarding Section 8(a)(5), 8(b), 9(a)(3), and 9(a)(4) of the Circular to section 3 of the appendix, to read as follows:

1. Purpose

The purpose of this Appendix is to provide a general context and explanation for the contents of the key Sections of the Circular.

2. Background

The Clinger-Cohen Act (also known as ''Information Technology Management Reform Act of 1996'' (Pub. L. 104–106, Division E, codified at 40 U.S.C. Chapter 25) grants to the Director of the Office of Management and Budget (OMB) various authorities for overseeing the acquisition, use, and disposal of information technology by the Federal government, so as to improve the productivity, efficiency, and effectiveness of Federal programs. It supplements the information resources management (IRM) policies contained in the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35).

The Paperwork Reduction Act (PRA) of 1980, Public Law 96–511, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 authorizes the Director of OMB to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

The Circular implements OMB authority under the PRA with respect to Section 3504(b), general information resources management policy, Section 3504(d), information dissemination, Section 3504(f), records management, Section 3504(g), privacy and security, and Section 3504(h), information technology. The Circular also implements certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a); the Government Paperwork Elimination Act. (Pub. L. 105–277, Title XVII); the Chief Financial Officers Act (31 U.S.C. 3512 *et seq.*); Sections 111 and 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759 and 487, respectively); the Computer Security Act (40 U.S.C. 759 note); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); and Executive Order No. 12046 of March 27, 1978, and Executive Order No. 12472 of April 3, 1984, Assignment of National Security and Emergency Telecommunications Functions. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other Sections of the PRA dealing with controlling the reporting and recordkeeping burden placed on the public.

3. Analysis

Sections 8a(5) and 8a(6). Information Dissemination Policy.

Section 8a(5). As described in Section 11 of the ''Electronic Freedom of Information Act Amendments of 1996'' (Pub. L. 104–231), 5 U.S.C. 552(g), an agency must place its index and description of major information and record locator systems in its reference material or guide. We expect that this index and description would include an agency's Government Information Locator Service (GILS) presence as well as any other major information and record locator systems the agency has identified.

In addition, each agency should prepare a handbook that describes in one place the various ways by which a person can obtain public information from the agency, as well as the types and categories of information available. In preparing the handbook, each agency should review the dissemination policies contained in this Circular. The handbook should be in plain English and user-friendly. Where applicable, it should indicate that the public is encouraged to access information electronically via the agency's home page or to search in its reading room, and that the public may also submit a request to the agency under the Freedom of Information Act. ''Types and categories'' of available information will vary from agency to agency, and agencies should describe their information resources in whatever manner seems most appropriate.

Although the law does not require that the handbook be available on-line, OMB encourages agencies to do so as a matter of policy. The handbook should include the following elements:

1. The location of reading rooms within the agency and within its major field offices, as well as a brief description of the types and categories of information available.
2. The location of the agency's World Wide Web home page.
3. A reference to the agency's FOIA regulations and how to get a copy.
4. A reference to the agency's FOIA annual report and how to get a copy.
5. The location of the agency's GILS page.
6. A brief description of the types and categories of information generally available from the agency.

In addition, if there is an on-line version, it should have electronic links to these elements wherever they exist.

Every agency has a responsibility to inform the public within the context of its mission. This responsibility requires that agencies distribute information at the agency's initiative, rather than merely responding when the public requests information.

Section 8b. Information Systems and Information Technology Management

Section 8b(1). Capital Planning and Investment Control

What Is the Capital Planning and Investment Control Process?

The capital planning and investment control process is a systematic approach to managing the risks and returns of IT investments. The process has three phases: select, control and evaluate. The process covers all stages of capital programming, including planning, budgeting and procurement. For additional information describing capital planning, please consult Circular A–11.

What Will Happen if I Don't Maintain an IT Capital Plan?

The IT Capital Plan is the document that demonstrates to the agency Investment Review Board and to OMB officials, that a project deserves Federal funds. If the agency does not provide this information, merits of the project can not be determined.

As Part of the Agency IT Capital Plan, Do I Need To Report on Both Development, Modernization and Enhancement (DME) as Well as Steady State Investments?

Yes. Additional information is provided in Part 3 of OMB Circular No. A–11, ''Planning, Budgeting, and Acquisition of Capital Assets.''

As Part of the Portfolio View of the Agency IT Capital Plan, Do I Only Need To Report on Major Investments?

In accordance with the Clinger-Cohen Act and Circular A–11, agencies are required to manage all investments. They must also provide OMB with individual IT Capital Plans for major projects, as well as significant projects at the request of OMB.

Where Can I Get More Information About Return on Investment (ROI)?

Agencies that would like to learn more about compiling and demonstrating projected return on investments (ROI) are encouraged to consult the Federal CIO Council document ''ROI and the Value Puzzle''. This document may be obtained at the CIO Council's web page (*http://cio.gov*).

Why Do Agencies Need To Conduct a Benefit-Cost Analysis?

Benefit-cost analyses provide vital management information on the most efficient allocation of human, financial, and information resources to support agency missions. Agencies should conduct a benefit-cost analysis for each information system to support management decision making to ensure: (a) Alignment of the planned information system with the agency's mission needs; (b) acceptability of information system implementation to users inside the Government; (c) accessibility to clientele outside the Government; and (d) realization of projected benefits. When preparing benefit-cost analyses to support investments in information technology, agencies should seek to quantify the improvements in agency performance results through the measurement of program outputs.

The requirement to conduct a benefit-cost analysis need not become a burdensome activity for agencies. The level of detail necessary for such analyses varies greatly and depends on the nature of the proposed investment. Proposed investments in ''major information systems'' as defined in this Circular require detailed and rigorous analysis. This analysis should not merely serve as budget justification material, but should be part of the ongoing management oversight process to ensure prudent allocation of scarce resources. Proposed investments for information systems that are not considered ''major information systems'' can be analyzed more informally.

While it is not necessary to create a new benefit-cost analysis at each stage of the information system life cycle, it is useful to refresh these analyses with up-to-date information to ensure the continued viability of an information system prior to and during implementation. Reasons for updating a benefit-cost analysis may include such factors as significant changes in projected costs and benefits, significant changes in information technology capabilities, major changes in requirements (including legislative or regulatory changes), or empirical data based on performance measurement gained through prototype results or pilot experience.

How Will Portfolio Management Aid in the Selection of Investments?

Agencies must also weigh the relative benefits of proposed investments in information technology across the agency. Given the fiscal constraints facing the Federal government, agencies should fund a portfolio of investments across the agency that maximizes return on investment for the agency as a whole. Agencies should also emphasize those proposed investments that show the greatest probability (*i.e.,* display the lowest financial and operational risk) of achieving anticipated benefits for the organization.

Is There a Preferred Model for Information Life Cycles?

The policy statements in this Circular describe an information system life cycle. It does not, however, make a definitive statement that there must be, for example, four versus five phases of a life cycle because the life cycle varies by the nature of the information system. Only two phases are common to all information systems—a beginning and an end.

While each phase of an information system life cycle may have unique characteristics, the dividing line between the phases may not always be distinct. For instance, both planning and evaluation must continue throughout the information system life cycle. In fact, during any phase, it may be necessary to revisit the previous stages based on new information or changes in the environment in which the system is being developed.

Why Are Post-Implementation Reviews Necessary?

Agencies will complete a retrospective evaluation of information systems once operational to validate projected savings, changes in practices, and effectiveness in serving stakeholders. These post-implementation reviews may also serve as the basis for agency-wide learning about effective management practices.

Section 8b(2). Enterprise Architectures

How Will the EA Guide the Agency?

An EA should guide the agency's management of information resources for agency-wide information and information technology needs consistent with Section 8b(2) of this Circular. The EA will help the agency cope with technology and business change by serving as a reference for updates to existing and new information systems. The EA will also assure interoperability of business processes, data, applications and technology as agencies integrate proposed information systems projects with one another and with existing legacy systems.

Where Can I Get More Information Describing the EA?

Agencies that require additional information on developing or maintaining an EA are encouraged to consult the Federal CIO Council document entitled, ''The Federal Enterprise Architecture (FEA) Framework,'' which is available on the CIO Council's web site (http://cio.gov). The Architecture Plus web site (http://www.itpolicy.gsa.gov/mke/archplus/archhome.htm) also has a number of useful documents.

What Is an Open Systems Environment?

An open system should be based on an architecture with published or documented interface specifications that have been adopted by a standards settings body.

What Enterprise Architecture Issues Must an Agency Consider That Have Government-Wide or Multiple Agency Implications?

The CIO Council has begun to address this issue in its ''Federal Enterprise Architecture Framework (FEAF), Version 1.0,'' and subsequent versions. The FEAF was created to promote shared development for common Federal processes, interoperability, and sharing of information among the agencies of the Federal government and other governmental entities, as required by the Clinger-Cohen Act. The FEAF is recommended for use in (1) Federal government-wide efforts, (2) multi-Federal agency (2 or more agencies) efforts and, (3) whenever Federal business-areas and substantial Federal investment are involved with international, state, or local governments. The Federal Enterprise Architecture Framework, Version 1.0, which is a conceptual model, begins the process of defining a better documented and coordinated structure for cross-cutting businesses and technology developments in the government. Collaboration among agencies who share a common business function promotes information sharing and is a prerequisite for the creation of a responsive electronic government.

Where Can I Get More Information on Federal EA Efforts?

Some other examples of ongoing Federal government efforts in this arena are Treasury Enterprise Architecture Framework (TEAF) and Command, Control, Communications, Intelligence, Surveillance, and Reconnaissance (C4ISR).

Section 8b(3) Securing Agency Information Systems

How Should Agencies Incorporate Security Into Management of Information Resources?

Effective security is an essential element of all information systems. A process assuring adequate security must be integrated into the agency's management of information resources. This process should be a component of the both capital planning process and the EA. A system's security requirements must be supported by the agency EA in order for it to be considered during the select phase of the capital planning process. Agencies will use the control and evaluate phases of capital planning to ensure these security requirements are met throughout the system's life cycle. For more information on computer security please read Appendix III of this Circular.

Ultimately, Who Determines the Acceptable Level of Security for a System?

Each agency program official must understand the risk to systems under their control. They are also responsible for determining the acceptable level of risk, ensuring adequate security is maintained to support and assist the programs under their control, ensuring that security controls comport with program needs and appropriately accommodate operational necessities. In addition, program officials should work in conjunction with Chief Information Officers and other appropriate agency officials so that security measures support agency information architectures.

Section 8b(4) Acquiring Information Technology

What Should Agencies Consider Before Acquiring a COTS Solution?

Commercial-off-the-shelf (COTS) products can provide agencies a cost effective and efficient solution. However, often COTS products require customization for seamless use. Therefore agencies must still thoroughly examine the impact of a COTS product selection. A lessons-learned guide describing the risks of COTS products has been published by the Information Technology Resources Board (ITRB). The guide, entitled ''Assessing the Risks of Commercial-Off-The-Shelf (COTS) Applications,'' is available on the ITRB web site (http://itrb.gov).

Section 9a(3). Chief Information Officer (CIO).

To Whom Does the CIO Report?

Each agency must appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who will report directly to the agency's head to carry out the responsibilities of the agency under the PRA.

What Is the CIO's Role in the Capital Planning Process?

The CIO will ensure that a capital planning process is established and rigorously used to define and validate all information resource investments. Through this process, the CIO will monitor and evaluate the performance of the information technology portfolio of the agency and advise the agency head on key budget, program, and implementation issues concerning information technology.

Additionally, the CIO will help establish a board composed of senior level managers, including the Chief Financial Officer and Chief Procurement Executive, who will have the responsibility of making key business recommendations on information resource investments, and who will be continuously involved. Many agencies will institute a second board, composed of program or project level managers, with more detailed business and information resource knowledge. They will be able to provide technical support to the senior level board in proposing, evaluating, and recommending information resource investments.

What Is the CIO's Role in the Annual Budget Process?

The CIO will be an active participant during all agency annual budget processes and strategic planning activities, including the development, implementation, and maintenance of agency strategic plans. The CIO's role is to provide leadership and a strategic vision for using information technology to transform the agency. CIO's must also ensure that all information resource investments deliver a substantial mission benefit to the agency and/or a substantial return on investment (ROI) to the taxpayer.

Additionally, the CIO will ensure integration of information resource planning processes and documentation with the agency's strategic, performance and budget process, in coordination with the CFO and Procurement Executive.

Section 9a(4)

Why Is the CIO Considered an Ombudsman?

The CIO designated by the head of each agency under 44 U.S.C. 3506(a) is charged with carrying out the responsibilities of the agency under the PRA. Agency CIOs are responsible for ensuring that their agency practices are in compliance with OMB policies. It is envisioned that the CIO will work as an ombudsman to investigate alleged instances of agency failures to adhere to the policies set forth in the Circular and to recommend or take corrective action as appropriate. Agency heads should continue to use existing mechanisms to ensure compliance with laws and policies.

[FR Doc. 00–31507 Filed 12–11–00; 8:45 am]

BILLING CODE 3110–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 12, 2001.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the

agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, System Accountant, Office of Investment Division, Small Business Administration, 409 3rd Street, SW., Suite 6300.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, System Accountant, 202–205–7759 or Curtis B. Rich, Management Analyst, (202) 295–7030.

SUPPLEMENTARY INFORMATION:

Title: Size Status Declaration.
Form No.: 480.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 4,200.
Annual Burden: 700.

Title: SBIC License Application Statement of Personal History and Qualification of Management.
Form No's.: 415, 415A.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 90.
Annual Burden: 14,400.

Title: Stockholder's Confirmation (Corporation) Ownership Confirmation (Partnership).
Form No.: 1405.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 600.
Annual Burden: 600.

Title: SBIC Financial Reports.
Form No.: 468.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 625.
Annual Burden: 1,025.

Title: Portfolio Financing Report.
Form No.: 1031.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 2,100.
Annual Burden: 420.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–31510 Filed 12–11–00; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 3501]

Culturally Significant Objects Imported for Exhibition; Determinations: ''The Ancient (circa. CE 224–641) Coins and History of the Zoroastrian (Pre-Islamic) Sassanian Dynasty of Iran''

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 ''The Ancient (circa. CE 224–641) Coins and History of the Zoroastrian (Pre-Islamic) Sassanian Dynasty of Iran,'' 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 Seventh World Zoroastrian Congress in Houston, Texas from on or about December 28, 2000 to on or about January 1, 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 Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 3, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–31622 Filed 12–11–00; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Israel Free Trade Area Implementation Act; Designation of Qualifying Industrial Zones

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Under the United States-Israel Free Trade Area Implementation Act (IFTA Act), products of Qualifying Industrial Zones encompassing portions of Israel and Jordan or Israel and Egypt are eligible to receive duty-free treatment. Effective upon publication of this notice, the United States Trade Representative, pursuant to authority delegated by the President, is designating the Mushatta International Complex, the El Zay Ready Wear Manufacturing Company Duty Free Area and the Al Qastal Industrial Zone as Qualifying Industrial Zones under the IFTA Act.

FOR FURTHER INFORMATION CONTACT: Edmund Saums, Director for Middle East Affairs, (202) 395–4987, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

SUPPLEMENTARY INFORMATION: Pursuant to authority granted under section 9 of the United States-Israel Free Trade Area Implementation Act of 1985 (IFTA Act), as amended (19 U.S.C. 2112 note), the President proclaimed certain tariff treatment for the West Bank, the Gaza Strip, and Qualifying Industrial Zones (Proclamation 6955 of November 13, 1996 (61 FR 58761)). In particular, the President proclaimed modifications to general notes 3 and 8 of the Harmonized Tariff Schedule of the United States: (a) To provide duty-free treatment to qualifying articles that are the product of the West Bank or Gaza Strip or a Qualifying Industrial Zone and are entered in accordance with the provisions of section 9 of the IFTA Act; (b) to provide that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the United States-Israel Free Trade Area Agreement (''the Agreement'') even if shipped to the United States from the West Bank, the Gaza Strip, or a Qualifying Industrial Zone, if the articles otherwise meet the requirements of the Agreement; and (c) to provide that the cost or value of materials produced in the West Bank, the Gaza Strip, or a Qualifying Industrial Zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and that the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a Qualifying Industrial Zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

Section 9(e) of the IFTA Act defines a ''Qualifying Industrial Zone'' as an area that ''(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or exercise taxes; and (3) has been specified by the President as a qualifying industrial zone.'' In Proclamation 6955, the President delegated to the United States Trade Representative the authority to designate qualifying industrial zones.

The United States Trade Representative has previously designated Qualifying Industrial Zones

under Section 9 of the IFTA Act on March 13, 1998 (63 FR 12572), March 19, 1999 (64 FR 13623), October 15, 1999 (64 FR 56015), and October 24, 2000 (65 FR 64472).

The Government of Israel and the Government of the Hashemite Kingdom of Jordan have agreed to the designation of the Mushatta International Complex (protocol dated November 22, 2000), the El Zay Ready Wear Manufacturing Company Duty Free Area (protocol dated January 12, 2000) and the Al Qastal Industrial Zone (protocol dated November 22, 2000) as Qualifying Industrial Zones. The Government of Israel and the Government of Jordan further agreed that merchandise may enter, without payment of duty or excise taxes, areas under their respective customs control in association with the Mushatta, El Zay and Al Qastal Qualifying Industrial Zones. Accordingly, the Mushatta International Complex, the El Zay Ready Wear Manufacturing Company Duty Free Area and the Al Qastal Industrial Zone meet the criteria under paragraphs 9(e)(1) and (2) of the IFTA Act.

Therefore, pursuant to the authority delegated to me by the President in Proclamation 6955, I hereby designate the Mushatta International Complex, the El Zay Ready Wear Manufacturing Company Duty Free Area and the Al Qastal Industrial Zone, as established by the January 12, 2000 and November 22, 2000 Amending Protocols to the Agreement Between the Government of the Hashemite Kingdom of Jordan and the Government of the State of Israel on Irbid Qualifying Industrial Zone, as Qualifying Industrial Zones under section 9 of the IFTA Act, effective upon the date of publication of this notice, applicable to goods shipped from these Qualifying Industrial Zones after such date.

Dated: December 4, 2000.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–31627 Filed 12–11–00; 8:45 am]

BILLING CODE 3901–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dallas County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for a Trinity Parkway reliever route, a transportation project, in the **Federal Register** on June 16, 1999 (Volume 64, Number 115). The FHWA is now issuing this supplementary Notice of Intent to include in the EIS a City of Dallas evaluation of a proposed City of Dallas Lake Plan located within the Trinity River Dallas Floodway in Dallas County, Texas. This proposed Lake Plan potentially affects the project corridor for the transportation project, and several of the route alternatives under consideration. Supplementary analysis is needed to fully address the impacts of joint development of these actions.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick A. Bauer, P.E., District Engineer, Federal Highway Administration, 300 East Eighth Street, Federal Office Building, Room 826, Austin, Texas 78701, Telephone (512) 536–5950. Mr. Jerry Hiebert, Executive Director, North Texas Tollway Authority (NTTA), 5900 West Plano Parkway, Suite 100, Plano, Texas 75093, Telephone (214) 522–6200.

SUPPLEMENTARY INFORMATION: The FHWA, jointly with the Texas Department of Transportation and the NTTA, and in cooperation with the City of Dallas, will prepare an EIS for the Trinity Parkway reliever route and associated improvements in the project corridor. Associated improvements include one or more proposed lakes, recreation amenities, and possible wetlands as identified in the City of Dallas Trinity River Corridor Master Implementation Plan Lake Design and Recreational Amenities Report, which are located within the Dallas Floodway.

Impacts caused by construction and operation of the Trinity Parkway and the Dallas Lake Plan will vary according to the alternatives selected. Generally, these projects may impact floodplains, water quality, air quality, socio-economic conditions, historic and other man-made structures.

The Draft EIS will be available for public and agency review and comment prior to 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 and the EIS should be directed to the FHWA or NTTA at the address provided above.

Issued on: December 1, 2000.

Salvador Deocampo,

Urban Programs Engineer, Federal Highway Administration.

[FR Doc. 00–31462 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, January 11, 2001. The meeting begins at 2:00 p.m. and ends at 6 p.m. The letter designations that follow each item mean the following: (I) is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements (I); (2) Review & and Approval of August 6, 2000 Board Meeting #35 Minutes and November 5, 2000 #36 Minutes (A); (3) Federal ITS Initiatives Report (I/D); (4) Coordinating Council Report (I/D/A); (5) State Chapters Council Report (I/D); (6) International Affairs Council & World Congresses Reports (I/D); (7) ITS America Trade Association Report (I); (8) Interim President's Report (External Issues) (I/D); (9) Other Business;

Business Session

(US DOT participants excused; Board Members, ITS America Members and Staff Only.) (10) Report to the Executive Committee (I/D); (11) Report of the Nominating Committee (I); (12) Report of the Finance Committee and Approval of 2001 Budget (I/D/A); (13) Interim President's Report (Internal Issues)(I/D); (14) Other Business and Schedule for Meetings This Year.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, January 11, 2001, from 2 p.m.–6 p.m. Room TBA.

ADDRESSES: Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008, Phone: 202–328–2000 Fax: 202–234–0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 7, 2000.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office.

[FR Doc. 00–31637 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on September 22, 2000 [65 FR 57422]. Comments were due on or before November 21, 2000. No comments were received.

DATES: Comments must be submitted on or before January 11, 2001.

FOR FURTHER INFORMATION CONTACT: Walter Lockland, Chief, Division of Operations Support, Office of Ship Operations, Maritime Administration, 400 Seventh Street, SW, Room 2123, Washington, DC 20590, telephone number 202–366–5735. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title of Collection: ''Automated Mutual-Assistance Vessel Rescue System (AMVER)''.

OMB Control Number: 2133–0025.

Type of Request: Approval of an existing information collection.

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Form(s): CG–4796 (MA) (Rev. 8–88).

Abstract: This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of Search and Rescue in the saving of lives at sea and for the marshalling of ships for National Defense and safety purposes. This collection consists of vessels that transmit the positions through various electronic means with the most commonly used AMVER/SEAS ''compressed message'' sent via INMARSAT–C. The information collected will be used to facilitate the immediate marshalling of ships for National Defense purposes and for the purpose of maintaining a current plot for Search and Rescue purposes for safety of life at sea.

Annual Estimated Burden Hours: 2,598 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention: MARAD Desk Officer.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator.

Dated: December 6, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–31527 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8242]

Notice of Receipt of Petition for Decision that Nonconforming 1994–2000 Honda VFR 400 and RVF 400 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–2000 Honda VFR 400 and RVF 400 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–2000 Honda VFR 400 and RVF 400 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 2001.

ADDRESSESES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle

originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California (''NCDL'') (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1994–2000 Honda VFR 400 and RVF 400 motorcycles are eligible for importation into the United States. The vehicles which NCDL believes are substantially similar are 1994–2000 Honda CBR 600 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1994–2000 Honda VFR 400 and RVF 400 motorcycles to 1994–2000 Honda CBR 600 motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

NCDL submitted information with its petition intended to demonstrate that 1994–2000 Honda VFR 400 and RVF 400 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1994–2000 Honda CBR 600 motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1994–2000 Honda VFR 400 and RVF 400 motorcycles are identical to 1994–2000 Honda CBR 600 motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars, and 122 Motorcycle Brake Systems.*

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR Part 565 are already affixed to 1994–2000 Honda VFR 400 and RVF 400 motorcycles.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) replacement of the headlamp system with a U.S.-model component; (b) installation of a red reflector on each side of vehicle at its rear end; (c) installation of an amber reflector on each side of the vehicle at its front end. The petitioner states that the vehicle is equipped with a tail lamp system, a stop lamp system, a license plate lamp, a red rear reflector, and turn signals that are in conformity with the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: installation of a U.S.-model speedometer. The petitioner states that all other controls and displays on the vehicle, including the supplemental engine stop control, conform to the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance

[FR Doc. 00–31638 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8294]

Notice of Receipt of Petition for Decision That Nonconforming 1998–2001 BMW R1200C Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998–2001 BMW R1200C motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998–2001 BMW R1200C motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 10 am to 5 pm)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Bayway Auto, Inc. of Elizabeth, New Jersey (''Bayway'')(Registered Importer 99–166) has petitioned NHTSA to decide whether non-U.S. certified 1998–2001 BMW R1200C motorcycles are eligible for importation into the United States. The vehicles which Bayway believes are substantially similar are 1998–2001 BMW R1200C motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998–2001 BMW R1200C motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Bayway submitted information with its petition intended to demonstrate that non-U.S. certified 1998–2001 BMW R1200C motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998–2001 BMW R1200C motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S. model headlamps, stop lamps, tail light lenses, amber front reflectors, rear red reflectors, and white license plate lamps and lenses on vehicles that are not already so equipped.

Standard No. 111 Rearview Mirrors: installation of U.S. model rearview mirrors.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* (a) Installation of an illuminated speedometer calibrated in miles per hour; (b) inscription of conforming symbols for the supplemental engine stop control, turn signals, headlamp, and horn on vehicles that are not already so equipped.

The petitioner also states that a vehicle identification number (VIN) plate and VIN reference label must be affixed to non-U.S. certified 1998–2001 BMW R1200C motorcycles to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 00–31639 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8281]

Notice of Receipt of Petition for Decision that Nonconforming 2000 Yamaha R1 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 Yamaha R1 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 Yamaha R1 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California (''NCDL'') (Registered Importer 92–011)

has petitioned NHTSA to decide whether non-U.S. certified 2000 Yamaha R1 motorcycles are eligible for importation into the United States. The vehicles which NCDL believes are substantially similar are 2000 Yamaha R1 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 Yamaha R1 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

NCDL submitted information with its petition intended to demonstrate that non-U.S. certified 2000 Yamaha R1 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 Yamaha R1 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR Part 565 are already affixed to non-U.S. certified 2000 Yamaha R1 motorcycles.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of a red reflector on each side of vehicle at its rear end; (b) installation of an amber reflector on each side of the vehicle at its front end. The petitioner states that the vehicle is equipped with a headlamp system, a tail lamp system, a stop lamp system, a white license plate lamp, a red rear reflector, and turn signals that are in conformity with the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* Modification of the speedometer to conform to the standard. The petitioner states that all other controls and displays on the vehicle, including the supplemental engine stop control, conform to the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 00–31640 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33952]

Norfolk Southern Railway Co.—Corporate Family Transaction Exemption—High Point, Randleman, Asheboro and Southern Railroad Co.

Norfolk Southern Railway Company (NSR), a Class I rail carrier, has filed a notice of exemption to renew its lease [1] and to operate approximately 28 miles of rail line owned by High Point, Randleman, Asheboro and Southern Railroad Company (High Point), a Class III carrier and a subsidiary of NSR, located in the State of North Carolina.

The transaction is scheduled to be consummated prior to December 31, 2000. The earliest the transaction can be consummated is December 7, 2000, the effective date of the exemption (7 days after the exemption was filed).

NSR has filed its notice of exemption under 49 CFR 1180.2(d)(3) as the proposed renewal of its lease with High Point is exempt because it is within the NSR corporate family and will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the NSR corporate family.

As a condition to this exemption, any employee affected by the transaction will be protected by the conditions imposed in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA* v. *ICC,* 675 F.2d 1248 (D.C. Cir. 1982).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33952, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Maquiling B. Parkerson, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: December 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31470 Filed 12–11–00; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR notes that the lease of the rail line by the Carolina and Northwestern Railway Company, a predecessor of NSR, was previously approved in *Carolina & Northwestern Railway Company, Control, Etc.,* 282 I.C.C. 802 (1951). NSR further notes that the extension of the lease contemplated by the transaction in STB Finance Docket No. 33952 extends the term of the lease arrangement until 2025 with an optional 25-year extension thereafter.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33951]

Norfolk Southern Railway Co.—Corporate Family Transaction Exemption—Yadkin Railroad Co.

Norfolk Southern Railway Company (NSR), a Class I rail carrier, has filed a notice of exemption to renew its lease [1] and to operate approximately 30 miles of rail line owned by Yadkin Railroad Company (Yadkin), a Class III carrier and a subsidiary of NSR, located in the State of North Carolina.

The transaction is scheduled to be consummated prior to December 31,

[1] NSR notes that the lease of the rail line by the Carolina and Northwestern Railway Company, a predecessor of NSR, was previously approved in *Carolina & Northwestern Railway Company, Control, Etc.,* 282 I.C.C. 802 (1951). NSR further notes that the extension of the lease contemplated by the transaction in STB Finance Docket No. 33951 extends the term of the lease arrangement until 2025 with an optional 25-year extension thereafter.

2000. The earliest the transaction can be consummated is December 7, 2000, the effective date of the exemption (7 days after the exemption was filed).

NSR has filed its notice of exemption under 49 CFR 1180.2(d)(3) as the proposed renewal of its lease with Yadkin is exempt because it is within the NSR corporate family and will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the NSR corporate family.

As a condition to this exemption, any employee affected by the transaction will be protected by the conditions imposed in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA* v. *ICC,* 675 F.2d 1248 (D.C. Cir. 1982).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33951, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Maquiling B. Parkerson, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: December 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31471 Filed 12–11–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–80–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–80–93 (TD 8645), Rules for Certain Rental Real Estate Activities (Section 1.469–9).

DATES: Written comments should be received on or before February 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–1455.

Regulation Project Number: PS–80–93.

Abstract: This regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20,100.

Estimated Time Per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,015.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–31501 Filed 12–11–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ42–1–214, FRL–6910–1]

Approval and Promulgation of Implementation Plans; New Jersey; Nitrogen Oxides Budget and Allowance Trading Program

Correction

In proposed rule document 00–30543 beginning on page 71278 in the issue of Thursday, November 30, 2000, make the following correction:

On page 71281, the table is corrected read as set forth below:

Source category	EPA's 2007 baseline emissions for NJ (tons/season)	EPA's 2007 NO_X budget emissions for NJ (tons/season)	NJ's 2007 projected emissions (tons/season)	NJ's 2007 projected reductions (tons/season)
EGUs	18,352	10,250	.....	.....
Non-EGU Point	15,975	15,464	.....	.....
Total	34,327	25,714	25,113*	9,214
Area sources	12,431	12,431	12,431	0
Non-road mobile	23,565	23,565	23,565	0
Highway mobile	35,166	35,166	36,166	0
NJ Total	105,489	96,876	96,275	9,214

*8,200 cap from trading rule.

[FR Doc. C0–30543 Filed 12–11–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,

December 12, 2000

Part II

Advisory Council on Historic Preservation

36 CFR Part 800

Protection of Historic Properties; Final Rule

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

RIN 3010–AA05

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final rule; revision of current regulations.

SUMMARY: The Advisory Council on Historic Preservation is publishing its final rule, replacing the previous rule which implemented the 1992 amendments to the National Historic Preservation Act (NHPA), and improved and streamlined the rule in accordance with the Administration's reinventing government initiatives and public comment. Litigation earlier this year challenged that previous rule. This rulemaking has addressed questions and concerns raised by that litigation, and has given the public a chance to provide input to determine how the rule has operated and revise the rule as appropriate. The final rule modifies the process by which Federal agencies consider the effects of their undertakings on historic properties and provide the Council with a reasonable opportunity to comment with regard to such undertakings, as required by section 106 of the NHPA. The Council has sought to better balance the interests and concerns of various users of the section 106 process, including Federal agencies, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Native Americans and Native Hawaiians, industry, and the public.

DATES: This final rule is effective January 11, 2001.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rule, please call Frances Gilmore or Paulette Washington at the regulations hotline (202) 606–8508, or e-mail us at regs@achp.gov. When calling or sending e-mail, please state your name, affiliation, and nature of your question, so your call or e-mail can then be routed to the correct staff person. Informational materials about the new rule will be posted on our web site (http://www.achp.gov) as they are developed.

SUPPLEMENTARY INFORMATION: The information that follows has been divided into five sections. The first one provides background information introducing the agency and summarizing the history of the rulemaking process. The second section highlights the changes incorporated into the final rule. The third section describes, by section and topic, the Council's response to public comments on this rulemaking. The fourth section provides a description of the meaning and intent behind specific sections of the final rule. Finally, the fifth section provides the impact analysis section, which addresses various legal requirements, including the Regulatory Flexibility Act, the Paperwork Reduction Act, the National Environmental Policy Act, the Unfunded Mandates Act, the Congressional Review Act and various relevant Executive Orders.

I. Background

The Advisory Council on Historic Preservation (''Council'') is the major policy advisor to the Government in the field of historic preservation. Twenty members make up the Council. The President appoints four members of the general public, one Native American or Native Hawaiian, four historic preservation experts, and one governor and one mayor. The Secretary of the Interior and the Secretary of Agriculture, four other Federal agency heads designated by the President, the Architect of the Capitol, the chairman of the National Trust for Historic Preservation and the president of the National Conference of State Historic Preservation Officers complete the membership.

This final rule sets forth the revised section 106 process. Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f (NHPA), requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment on such undertakings.

Through Section 211 of the National Historic Preservation Act, the Council is authorized to ''promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 * * * in its entirety.''

After publishing two Notices of Proposed Rulemaking (59 FR 50396, October 3, 1994; and 61 FR 48580, September 13, 1996), the Council published a final rule setting forth a revised process implementing section 106 in its entirety (64 FR 27044–27084, May 18, 1999). Such rule went into effect on June 17, 1999, and superseded the rule previously issued in 1986.

Two major forces behind that revision process were the 1992 amendments to the National Historic Preservation Act (NHPA), and the Administration's reinventing government efforts. In October, 1992, Public Law 102–575 amended the NHPA and affected the way section 106 review is carried out. Among other things, the 1992 amendments:

1. Clarified that ''[p]roperties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.'' 16 U.S.C. 470a(d)(6)(A);

2. Required that ''[i]n carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described'' above. 16 U.S.C. 470a(d)(6)(B). Also see 36 CFR 800.2(c)(3) (granting such tribes and Native Hawaiian organizations, ''consulting party'' status in the section 106 process). Implementation of this statutory consultation requirement is found throughout the proposed rule. See, for example, 36 CFR 800.3(f)(2), 800.4(a)(4), 800.4(b), 800.4(c)(1), 800.5(a), 800.6(a)–(b).

3. Added a provision in the NHPA prohibiting Federal agencies from granting a license or assistance to applicants who, with the intent to avoid the requirements of section 106, significantly adversely affected historic properties related to the license or assistance. In such cases, the Federal agency can only grant the license or assistance if it determines, after consulting with the Council, that circumstances justify granting the license or assistance despite the effects to the historic property. 16 U.S.C. 470h–2(k). See 36 CFR 800.9(c).

4. Explicitly recognized the long-standing practice of having Federal agencies develop agreements to address adverse effects of their undertakings to historic properties. This practice had also been recognized in the earlier, 1980 amendments, where Section 205(b) of the NHPA was changed to state that the Council could be represented in court by its General Counsel regarding ''enforcement of agreements with Federal agencies.'' It also clarified that where such an agreement is not reached, the head of the relevant Federal agency must document his/her decision pursuant to section 106. Such agency head cannot delegate that responsibility. It also provided that agreements executed pursuant to the section 106 process would govern the relevant Federal undertaking and all its parts. 16 U.S.C. 470h–2(l). See 36 CFR 800.6, 800.7.

5. Added a member to the Council. This Council member would be a Native

American or Native Hawaiian appointed by the President. 16 U.S.C. 470i(a)(11).

6. Explicitly clarified the fact that the Council has authority to ''promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act *in its entirety*.'' 16 U.S.C. 470s (emphasis added) (highlighted text was added by the 1992 amendments); and

7. Amended the definition of the term ''undertaking,'' by adding ''[projects, activities, and programs] subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency'' to the list of actions constituting an ''undertaking.'' 16 U.S.C. 470w(7)(D). The amended, statutory definition of ''undertaking'' was adopted verbatim in the rule. 36 CFR 800.16(y).

Additionally, as part of the Administration's National Performance Review and overall regulatory streamlining efforts, the Council undertook a review of its regulatory process to identify potential changes that could improve the operation of the section 106 process and conform it to the principles of the Administration. A description of the Council's revision efforts from 1992, which led to the final rule that went into effect in 1999 (''1999 rule''), is found in its preamble (64 FR 27044–27084, May 18, 1999). That preamble extensively details its history, purpose, intent, and response to public comment.

On February 15, 2000, the National Mining Association (''NMA'') filed a lawsuit challenging the 1999 rule. Among other things, the lawsuit alleged violations of the Appointments Clause of the Constitution and certain provisions of the Administrative Procedure Act pertaining to rulemaking. After assessing the allegations contained in the lawsuit, the Council decided to move forward with the present rulemaking process that culminates today with this final rule. The Council believed that this rulemaking would provide an opportunity to address assertions about the procedural adequacy of the promulgation of the 1999 rule, including those about the participation of the National Trust for Historic Preservation (''Trust'') and the National Conference of State Historic Preservation Officers (''NCSHPO''), as Council members, in the adoption of the final, revised rule. It would also give the public a chance to provide input to determine how the rule has operated and revise the rule as appropriate. This rulemaking does not evidence Council agreement with the merits of the allegations but, rather, the Council's desire to remove these issues from litigation.

Accordingly, at the June 23, 2000 Council meeting in Maine, the Chairman of the Council asked the Council members to take two actions. The first action was a new vote on the adoption of the 1999 rule, without the participation of the Trust and NCSHPO. The Council members voted 16–0 in favor of the 1999 rule, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it.

The second action was a vote on undertaking the present rulemaking process, using the text of the 1999 rule as the proposed rule. Again, the Council members voted in favor of moving forward with the rulemaking by a vote of 16–0, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it. Accordingly, on July 11, 2000 the Council published a proposed rule for public comment (65 FR 42833–42849).

The public was given a 30-day period, until August 10, in which to comment on the proposed rule. All those who filed a timely request for an extension of the comment period were given until August 31 to submit their comments. We believe the extension granted was reasonable in light of the circumstances.

As stated above, the text of the proposed rule submitted for public comment was the same as the one for the final rule that had been in effect for more than a year. That final rule, in turn, was the product of a rulemaking process that afforded the public ample opportunity, throughout six years, to participate and comment. The preamble of that 1999 final rule (found at 64 FR 27044–27084, May 18, 1999) extensively details its history, purpose, intent, and response to public comment. It is a lengthy document and will not be re-printed here.

After the close of the public comment period, the Council, minus the Trust and NCSHPO, considered the comments and incorporated changes into a draft rule as was deemed appropriate. On November 17, 2000, the Council voted on whether to adopt the draft rule as a final rule. As stated before, the Council members representing the Trust and NCSHPO had already recused themselves from the rulemaking process and proposed suspension. They accordingly removed themselves from the table and took no part in the deliberations and vote on this matter.

The Council voted to adopt the draft rule as the final rule now being published, by a vote of 17 for, 1 abstention, and none against.

The Council reiterates that the Trust and NCSHPO did not participate in any way whatsoever in the deliberations, decisions, votes, or any other Council activities regarding this rulemaking. Their only participation in this rulemaking took the form of a written comment filed by NCSHPO on the proposed rule. Such comment was submitted by NCSHPO, as a member of the general public, during the commenting period provided by the notice of proposed rulemaking.

II. Highlights of Changes

The Council retained the core elements of the section 106 process that have been its hallmark since 1974. The Council also retained the major streamlining improvements that were adopted in June, 1999. Changes adopted were primarily modifications to remove operational impediments in the process and clarifications of certain provisions and terms. In addition, a number of technical and informational edits were made throughout the rule. Major changes are as follows:

1. Clarification of the Role of State Historic Preservation Officers.

Section 800.2(c)(1) was amended to acknowledge the statutory responsibility of SHPOs to cooperate with agencies, local governments, and organizations and individuals to ensure that historic properties are considered in planning.

2. Clarification of the Role of Indian Tribes and Tribal Historic Preservation Officers

Section 800.2(c)(2) was completely rewritten to better distinguish the roles of Indian tribes that had assumed the responsibilities of SHPOs on their tribal lands under section 101(d)(2) of the Act from that of Indian tribes which had not. The Council notes that these amendments do not change the substantive role of non-101(d)(2) Tribes or any other party in the section 106 process under the proposed rule, but simply provide for a clearer rule. Section 800.2(c)(2)(ii) was also amended to clarify that the Act requires agency consultation with Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to historic properties regardless of whether the historic properties are located on or off tribal land. Section 800.2(c)(2)(ii)(B) was amended to better reflect the sovereignty of Indian tribes over their tribal lands.

3. More Flexibility To Involve Applicants

Section 800.2(c)(5) was amended to resolve a major problem regarding the participation of applicants for Federal assistance or permission in the Section 106 process. Under the change, an agency may authorize a group of applicants to initiate the section 106 process, rather than being required to grant individual authorizations. Language was also added to clarify that such authorizations do not relieve the Federal agency of its obligations to conduct government-to-government consultation with Indian tribes.

4. Clarification of Undertakings Covered by the Section 106 Process

Section 800.3(a)(1) was amended to better state the premise of the rule that only an undertaking that presents a type of activity that has the potential to affect historic properties requires review. The previous language implied that making such a determination related to the circumstances of the particular undertaking, rather than the more generic analysis of whether the type of undertaking had the potential to affect historic properties.

5. Reinforcement of the Federal Agency's Responsibilities in Identifying Historic Properties

Section 800.4(a) was amended to assert that determinations in this subsection are made unilaterally by the Agency Official, after consultation with SHPO/THPO. Some had misunderstood the previous version as providing for consensus determinations.

6. Revision of the Role of Invited Signatories

Section 800.6(c)(2) was rewritten to remove confusion about the ability of the Federal agency to invite other parties to become formal signatories to Memoranda of Agreement and to clarify their rights and responsibilities as invited signatories. Also regarding memoranda of agreement, § 800.6(c)(8) was amended to provide that the option for their termination exists not only when one party simply cannot comply with its terms, but also when the terms are not being followed for whatever reason.

7. Revision of the Use of Environmental Impact Statements (EIS) To Comply With Section 106

Section 800.8(c)(4) was rewritten to more clearly state the actions a Federal agency must take in making a binding commitment in an NEPA documents to carry out measures to avoid, minimize or mitigate adverse effects and thereby use the NEPA process to comply with section 106 requirements.

8. Redefinition of the Role of the Council When Improving the Operation of Section 106

Section 800.9(d)(2) was amended to require the Council to participate in section 106 reviews in a manner parallel to SHPOs/THPOs when the Council decides to join individual case reviews it would not otherwise engage in. This occurs when the Council has determined that section 106 responsibilities are not being properly carried out by an agency or SHPO/THPO and the Council's participation can remedy the problem.

9. Modification of Documentation Standards

Section 800.11(a) was amended to state that a Federal agency's responsibility to provide documentation was limited by legal authority and the availability of funds. Section 800.11(c)(2) was also amended to require Federal agencies to include the views of the SHPO/THPO when consulting with the Council on withholding confidential information.

10. Inclusion of National Register Eligibility Assessment in Consideration of Post-Review Discoveries

Section 800.13(b)(3) was amended to add a requirement that a Federal agency seeking expedited section 106 review for properties discovered after approval of an undertaking provide information on the eligibility of affected properties for the National Register.

11. Increased Flexibility for Programmatic Agreements

Section 800.14(b) was amended by the addition of a new section authorizing the Council to create ''prototype programmatic agreements'' which could be executed by a Federal agency and an SHPO/THPO without Council participation. This would permit routine programmatic agreements that follow an accepted model to be completed more expeditiously.

12. Improved Consideration of Stakeholder and Public Views on Proposed Exemptions

Section 800.14(c)(5) was amended to add Council consideration of the views of SHPOs/THPOs and others consulted when determining whether to approve an exemption from the section 106 process. The Council was also required to notify the agency and SHPOs/THPOs of it decision on the requested exemption.

13. More Flexibility for Federal Agencies When Consulting With Indian Tribes on Nationwide Program Alternatives

Section 800.14(f) was amended to reemphasize a Federal agency's obligation under various authorities to consult with Indian tribes and Native Hawaiian organizations when developing nationwide program alternatives, but to acknowledge that it is the agency's responsibility to determine the appropriate means of meeting those obligations.

III. Response to Public Comments

Following is a summary of the public comments received in response to the notice of proposed rulemaking, along with the Council's response. The public comments are printed in bold typeface, while the Council response follows immediately in normal typeface. They are organized according to the relevant section of the proposed rule or their general topic.

Section 800.1

The Council should expand the definition of SHPO responsibilities beyond cooperation with the Secretary, Advisory Council and Federal agencies to include explicit reference to organizations and individuals, such as regulatees and their consultants. The Council noted that such language was warranted by the NHPA, and therefore inserted language regarding such SHPO duties per section 101(b)(3)(F) of the NHPA.

The very last sentence of this section should be changed to: ''The Agency Official is encouraged to initiate the section 106 process as early as practicable in the undertaking's planning so that it may consider impacts on historic resources.'' The language on the proposed rule stated that the Agency Official ''shall ensure that the section 106 process is initiated early in the undertaking's planning * * *'' The Council disagreed with the commenter's proposed change since it is crucial that agencies initiate the section 106 process at a point where alternatives have not yet been foreclosed. Otherwise, the review would be rendered meaningless.

Council is urged to preserve flexibility provision under the 1986 regulations, which stated: ''The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting different program requirements, as long as the purposes of section 106 of the Act and these regulations are met.'' Specific areas of

flexibility are incorporated in the proposed rule to embody the general flexibility term found in the 1986 rule. Among these are: phased identification, compression of steps, NEPA coordination, and the various program alternatives under § 800.14 of the rule.

Section 800.2(a)

The regulations should state that Federal agencies that authorize applicants to initiate consultation are still responsible for their government to government relationships with tribes. The Council agreed and incorporated such change at § 800.2(c)(5) since the statement comports with Executive Orders and Memoranda regarding the government-to-government responsibilities of Federal agencies towards federally recognized tribes.

Requirements of § 800.14 preclude implementation of § 800.2(a) insofar as it calls for utilization of the agency's existing procedures to fulfill consultation requirements. The Council disagreed. The comment failed to consider the difference between procedures that implement 36 CFR part 800 (those under § 800.2(a)) and procedures that actually substitute/modify the process under 36 CFR part 800 (those under § 800.14).

Nothing in NHPA requires Federal agencies to consult with a particular party, thus, while such consultation may be beneficial, it should be left to the discretion of the Federal agency under NHPA. The Council not only believes that such consultation is beneficial, but it also believes it has the required authority to justify this and all other sections of the proposed rule. Consultation occurs in the section 106 process propounded by the rule in a way that is fully consistent with the statute. See, for example, the statutory language under section 101 of the NHPA regarding SHPO and THPO assistance to Federal agencies in the section 106 process, the consultation requirements with Indian tribes and Native Hawaiian organizations under the 1992 amendments to the NHPA, and language under Section 110 of the NHPA ensuring that public involvement occurs in the section 106 process. Such consulting entities have the specialized knowledge and interest that Federal agencies may lack. Consultation with these parties provides the Federal agency with the information it needs to make reasoned assessment of how its undertakings affect historic properties. Furthermore, it is clear to the Council through its years of experience, that such consultation is necessary and that Federal agencies heavily rely on such assistance (in particular that of the SHPOs). Please also refer to responses given under the legal topics.

Federal officials (and not State, local or tribal government officials) are responsible for taking into account the effects of their undertakings on historic properties. Furthermore, it is inappropriate to mention Section 112 of the NHPA in this section since the Council has no authority to enforce it. The Council agrees that the responsibility for section 106 compliance lies with Federal agencies, including the ''take into account'' responsibility. The Council clarifies that section 112 is merely restated in the rule for reference purposes (as opposed to enforcement).

ACHP refusal to take a position regarding delegation of authority have resulted in SHPOs disregarding FCC's jurisdiction and emphasizes on enforcement over historic preservation. During the time frame of this rulemaking, the Council issued a memorandum to the FCC, all SHPOs and the telecommunications industry clarifying its position on delegations of authority. This and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. These discussions commenced before the present rulemaking process. Such ongoing discussions are referred hereinafter as ''Telecommunications Working Group.''

Although section 101 of the NHPA establishes an advisory role for SHPOs to assist Federal agencies, the rules fail to establish consistent objective standards for SHPOs to apply in carrying out their duties. It undermines the ability of SHPOs and Federal agencies to adequately serve the Council's goal of protecting historic properties. The Council believes that the rule contains adequate standards that guide SHPOs in carrying out their functions. These standards can be found in various parts of the rule (e.g., criteria of adverse effect under § 800.5(a), and various definitions of terms under § 800.16). Further standards, such as the National Register Criteria of Eligibility (36 CFR part 63), are referenced in the present rule, and guide SHPO duties. Furthermore, pursuant to the NHPA, the Department of the Interior regularly reviews SHPO programs and ensures such programs and their personnel have the necessary expertise to guide their performance of their statutory duties, which include ''to consult with * * * Federal agencies * * * on Federal undertakings that may affect historical properties.'' 16 U.S.C. 470a(b)(3)(I).

''Delegation authority'' should be expanded to include ''approved'' state agencies and other pre-approved designees to conduct section 106 coordination on behalf of the Agency Official. The Council disagrees since the comment fails to realize that such authority can only come through statute. Congress specifically placed section 106 compliance responsibilities on Federal agencies. Only Congress can shift that responsibility. The Council is only aware of certain Department of Housing and Urban Development programs containing such a statutory delegation.

Section 800.2(b)

Licensees should be recognized as consulting parties under the regulations. Applicants for licenses, permits, approvals or assistance are specifically listed in the rule as consulting parties (see §§ 800.2(c)(5) and 800.3(f)(1)).

Add the following to § 800.2(b)(2): ''Within 30 days of receipt of a request for such advise, the Council shall reply in writing with advise, or it shall reply in writing that it will not offer advice stating its reason(s) for so doing.'' This is needed to ensure Council responds in a timely fashion. The Council disagreed with this proposal. Time limits, and the consequences of not replying in time, are already specified in the proposed rule as needed.

Section 800.2(c)

Remove the first sentence of § 800.2(c)(1)(I). It is unrealistic to charge the SHPO with ''reflecting the interests of the State and its citizens in the preservation of their cultural heritage.'' This only encourages agencies to treat SHPO coordination as the be-all and end-all of consultation, even where large numbers of a State's citizens violently disagree with a SHPO position. The rule reasonably supports the idea that the SHPO reflects the interests of the State by virtue of being a State official appointed by the elected State Governor.

Several comments requested that the rule distinguish the roles of Tribes that have an approved ''Tribal Historic Preservation Officer' (THPO) pursuant to section 101(d)(2) of the NHPA, and those that do not. The use of the term ''THPO'' for both was deemed to be highly confusing. As stated in the highlight of changes above, § 800.2(c)(2) was completely rewritten to better distinguish the roles of Indian tribes that had assumed the responsibilities of SHPOs on their tribal lands under section 101(d)(2) of the Act from that of Indian tribes which had not. The Council notes that these amendments do

not change the substantive role of non-101(d)(2) Tribes or any other party in the section 106 process of the proposed rule, but simply provide for a clearer rule.

Many THPO's have construed this provision to mean that they must be invited to participate as ''consulting parties'' on all undertakings affecting properties of traditional religious and cultural importance, a position at odds with the NHPA. It is requested that the role of tribal representatives and THPO's in consultation off tribal land to be clarified consistent with the statute. The Council believes that section 101(d)(6)(B) of the NHPA clearly gives federally recognized tribes and Native Hawaiian organizations a right to be consulted regarding historic properties of religious and cultural significance to them. The cited section of the statute does not qualify that right depending on whether the historic property is located on or off tribal lands. It also does not qualify that right depending on whether the tribe has a THPO certified pursuant to section 101(d)(2) of the NHPA.

Too difficult to implement requirements of § 800.2(c)(2) when the project is not on reservation land. It is unreasonable for each Federal agency to develop on their own information as to which tribe(s) may be associated with specific geographic areas. While the Council acknowledges certain initial difficulties in identifying tribes to consult outside tribal lands, it believes the statute is clear in mandating such consultation regardless of the location of the historic property. The Council and the National Park Service are currently conducting a guidance project to assist agencies in identifying Indian tribes to be consulted.

Regulations do not create a ''consultative'' role for SHPO staff who would prefer to spend their time and efforts preserving historic properties rather than enforcing procedures on telecommunications projects. The SHPOs have a specific statutory duty to consult with Federal agencies and assist them with their section 106 duties. 16 U.S.C. 470a(b)(3)(I). Moreover, the SHPOs do spend their time directly preserving historic properties through their involvement in the section 106 process. The Council has not received contrary views from any SHPOs. Finally, similar issues of SHPO/telecommunications industry work in the section 106 process is being addressed by the ongoing Telecommunications Working Group.

Definition of ''additional consulting parties'' is too open ended, since it makes it possible for anyone who can claim a ''concern'' to become a consulting party, adding delays and expenses to the process (§ 800.2(c)(6)). Even if Council had authority over this issue, at a minimum the rule should require a demonstration of some form of protectable interest similar to the concept of legal standing. Standards for additional consulting parties adequately balance the project's need for expediency and the right of those with defined interests in getting involved in the process. To ensure this provision is not abused, the rule gives the Agency Official the ultimate discretion to invite additional consulting parties or not. The Council believes the Agency Official is in a better position to balance the benefits of including these parties against the costs of so doing. The Agency Official will be able to do this on a case by case basis, according to the particulars of the specific undertaking at issue.

Use of the phrase ''SHPO/THPO'' has led to misunderstandings concerning the different regulatory roles of the SHPOs and THPOs in consultation on projects located off tribal lands. Guidance is needed to clarify these roles. The Council believes the rule is clear in that Federally recognized tribes have to be consulted regarding historic properties of cultural and religious significance to them, regardless of the location of such properties. With the changes regarding the use of the term THPO, there should be no confusion as to consultative rights of tribes.

Expanded definition of consulting parties has made it difficult and time consuming for agency officials to establish an appropriate consultation process. Guidelines for determining formal consulting parties should be developed. The Council believes that §§ 800.2 and 800.3(f) set forth clear standards for who should be a consulting party, and a clear process for who makes the determination and when. A further expansion on this topic to aid Federal agencies is better suited for guidance.

Regulations give tribes a secondary role to SHPOs with respect to tribal cultural and sacred properties which are not on tribal lands. The 1992 Amendments were intended to provide tribes with rights at least equivalent to SHPOs regardless of where the properties are located. Tribes want same consultation rights as SHPO for tribal cultural properties located off tribal lands. SHPO role is a creation of the regulations and is not required in the Act. The Council does not believe that Tribes have a secondary role to SHPOs. They do have a different role however. The rule recognizes that Tribes are entitled to consult regarding historic properties of religious and cultural significance to them that may be affected by an undertaking. The SHPO is also entitled to consult, consistent with the definition of SHPO responsibilities in the Act, regarding historic properties. 16 U.S.C. 470a(b)(3).

The regulations assume that the THPO is a regulatory/executive body of a tribal government. Federal agencies believe that consulting with the THPO or tribal cultural resource manager fulfills the government-to-government responsibility. Agencies need to become familiar with this responsibility. The regulations fail to address or identify the process for government-to-government consultation. It is the duty of the relevant Federal agency (and not the Council) to specify how they meet their government-to-government responsibilities. See Executive Memorandum on Government-to-Government Relations with Native American Governments, dated April 29, 1994.

Granting SHPOs a role on tribal lands where there is no 101(d)(2) THPO is an intrusion on tribal sovereignty and is hypocritical since tribes are not given an equivalent role for their traditional cultural and sacred properties off tribal lands. The Council disagrees. Tribes that attach religious and cultural significance to historic properties must be invited to consult, regardless of where the property is located. The proposed rule follows statutory roles given to Tribes and SHPOs. See 16 U.S.C. 470a in general, and 470a(d)(2)(D)(iii).

The regulations provide a significant role for the THPO, above the tribal government leader. Federal agencies now have an ''out'' to avoid the government-to-government responsibility. Agencies need to learn, and ACHP trainers need to emphasize, the difference. The regulations should include a section that requires agencies to develop a process that recognizes the THPO role. The Council reasonably assumes 101(d)(2) THPOs are the appropriate contact for government to government relations. Nevertheless, the Council will confirm this statement with the Department of the Interior.

800.2(c)(3)(vi) is confusing. This allows for the SHPO and Council to ignore and avoid tribal involvement. It also provides an outlet for Federal agencies to disregard Federal law, E.O.s, etc. Finally, the SHPO then becomes a decision maker on tribal lands. This provision was requested by Tribal comments that wanted to avoid Tribes being required to sign an agreement if they chose not to sign it. A

waiver under § 800.2(c)(3)(vi) requires positive action from the Tribe, and therefore does not present a loophole to be used by Federal agencies or any other entities.

A tribe that does not have a 101(d)(2) THPO does not have the same authority as a tribe that does. This gives the SHPO the ability to come onto reservation lands and dictate how the tribe handles its preservation program and individual projects. Would like the regulations to provide tribes the option of inviting the SHPO into consultation on tribal lands. Section 101(d)(2) of the NHPA provides for THPO substitution of the SHPO on tribal lands if approved by DOI. If there is no approved 101(d)(2) THPO, NHPA provides that the SHPO shall consult with Federal agencies on any undertaking within the State. Also, NHPA specifically states the right of private owners of land within tribal boundaries to request SHPO involvement in undertakings on tribal lands. See section 470a(d)(2)(D)(iii) of NHPA.

Change last sentence to: Nothing in this part alters, repels, interprets, or modifies tribal sovereignty or preempts, modifies, or limits the exercise of any such rights. This change would delete ''is intended to . . .'' The Council agreed with such a change since it was needed to more properly accord with tribal sovereign rights and the original intent of the section.

Section 800.2(c)(5)

Several comments requested that the rule be changed so that Federal agencies will not be required to give specific authorization for each applicant to initiate consultation with SHPO/THPOs. The Council supported amending the proposed rule to allow agencies to authorize applicants to initiate consultation on a broader basis than individual authorizations.

Because of the time and resources required to consult with Tribes, more Federal agencies are delegating their consultation responsibilities, without guidance, to consultants, applicants and others. Many tribes, however, refuse to interact with parties other than the Federal agency or agency director. The Council responds to this concern by clarifying that such insistence is due to the Federal agencies' government-to-government responsibilities under Executive Orders and Memoranda.

Delegating authority to applicants is delegating Federal agency responsibility. This process lacks the integrity of upholding the intent of laws and EOs. Generally, tribes are insisting on formal consultation with Federal agencies, not applicants. Federal agencies are required to consult with Indian Tribes on a government-to-government basis pursuant to Executive Orders, Presidential memoranda, and other authorities. The proposed rule therefore was amended to acknowledge this responsibility. The authorization to applicants to initiate consultation does not include consultation with Tribes.

Section 800.2(d)

Proposed part 800 elaborate procedures for public participation go well beyond the provisions of NHPA. NHPA does not require separate public notice and comment requirements at every stage of the review process. Recommend that part 800 recognize Federal agencies' existing public participation procedures and permit agencies to rely on those procedures in addressing adverse effects only. The rule does not require separate public notice and comment requirements at each step. Also, the proposed rule already allows for use of agency procedures. Nevertheless, it is simply impractical and illogical to solely rely on agency procedures for public involvement regarding section 106 if such procedures fail to address historic preservation issues.

Public participation provisions are an improvement over the 1996 proposed rule, but still invite problems. Council is not vested with authority to regulate public participation. Section 106 does not address this topic. Council has no authority to vest anyone, but itself, with a reasonable opportunity to comment on the Federal undertaking. The Council believes it has the required authority to justify this and all other sections of the proposed rule. Please refer to our response regarding legal authority, below.

This provision lies outside of the NHPA section 106 authority, and is a back door mechanism to impose upon Federal agencies the Council's interpretation of the interested public instead of leaving the interpretation of that role to the agencies, in consultation with the Secretary of Interior as provided for in section 110(a)(2)(E) of the NHPA. Deleting this provision is recommended. The Council disagrees. As stated below, the Council has the required authority to justify this and all other sections of the proposed rule. Furthermore, § 800.2(d)(3) allows the use of agency procedures to the extent they provide pertinent information on historic preservation.

Section 800.3(a)

Several comments requested clarification that under § 800.3(a) the agency should not be considering case-specific issues, and that in this section the reference is to ''type and nature'' of the undertaking. In light of these comments and practical experience, the Council agreed that such a change was necessary. The language in § 800.3(a) was amended to state that the determination is as to whether the undertaking is a ''type'' of activity that has the potential to cause effects on historic properties, assuming such properties would be present.

Regulations should address what happens with program alternatives or PAs that were executed before the effective date of the new regulations. Such agreements are still valid and will continue to be in effect according to their terms.

Section 800.3(b)

The section should read that the Agency Official ''may coordinate * * *.'' Council cannot require such coordination. The comment misreads the proposed rule. It only states that the Agency Official ''should coordinate,'' implying encouragement, but not requirement.

Section 800.3(c)

30 day response period is too long and only ensures the destruction or damage to an archeological site where the project went forward because of the necessities of the mission. A 15 day response period would be much more appropriate in recognition of the rapid forms of communication available. The Council disagrees. The 30 day time period reflects an adequate balance between project need for expediency and workload requirements on reviewers.

Either delete section 3(c)(3) altogether, or add further guidance or regulatory definition of the phrase ''* * * and to the nature of the undertaking and its effects on historic properties.'' Also, delete any discussion of timing in section 3(c)(4). It erroneously implies that nearly everything submitted to the SHPO falls under a 30 day review period. Review time periods should simply be referenced in the various sections of §§ 800.4–800.6. The rule indeed imposes a 30 day limit on SHPO/THPO at each step of the process where a formal response is required to findings and determinations, unless otherwise noted. See § 800.3(c)(4). SHPO/THPO cannot require the process to stop by failing to respond by the end of this period. On the other hand, there is no such clock for consultation alone (e.g., regarding APE or for seeking ways to avoid, minimize or mitigate adverse

effects). All that the Federal agency needs to do regarding such consultation is to make a reasonable effort to consult (which may or may not take 30 days) and move forward with the process.

Section 800.3(d)

Once SHPO declines to participate, Federal agencies should have no further burdens. To the extent that the Council is relying on SHPOs to comment or consult on its behalf under section 106, the agency complies with section 106 by providing SHPO (Council) an opportunity to comment. Rule should also contain presumption that SHPO concurs with a written finding if it does not respond within 30 days. Accordingly, § 800(d) should read: (1) If the SHPO declines in writing to participate, or otherwise cooperate, in the section 106 process, the Agency Official shall proceed as it believes appropriate; (2) If the SHPO does not respond within 30 days to a written finding under this part, or sooner if reasonably requested by the Agency Official, a presumption of concurrence with such finding shall be created. Federal agency obligations under section 106 of the NHPA do not terminate when the SHPO or any other entity declines to continue participating. SHPOs do not comment or participate in consultation on behalf of the Council. A process of allowing the agency to proceed without any Council review when SHPO declines to participate or respond within the 30 days is inconsistent with the letter, intent and spirit of the law. Nothing in the NHPA indicates in any way whatsoever that Federal agency responsibilities under section 106 disappear once a SHPO refuses to participate. The statute mandates Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment regardless of what any other entity does or does not do. 16 U.S.C. 470f. It is noted that the rule does have certain, reasonable presumptions of concurrence when a response does not come in time. See particularly, § 800.3(c)(4).

Section 800.3(f)

The regulations do not give adequate guidance regarding federally designated THPO's, Federally recognized tribes without a designated THPO, and federally recognized tribes not occupying tribal lands. Guidance is also needed to identify associated tribes, crosscutting boundaries or ancestral lands, differentiate among differing views of ancestral lands to ensure that tribes' rights are addressed without impinging upon the property rights of private landowners. Such information can be provided in guidance but is not appropriate in a rule. Furthermore, see information above regarding Council/NPS project regarding assistance to Federal agencies regarding ancestral lands.

Section fails to establish who is responsible for establishing the list of consulting parties, setting a time limit in which the SHPO should respond, and defining what constitutes a good faith effort in doing so. This comment is incorrect. The proposed rule does establish that the Agency Official is ultimately responsible for establishing the list of consulting parties. It also sets forth the 30 day comment period. The meaning of a ''good faith effort'' will be better handled through guidance.

Section 800.4(a)

This is a useful and important provision. Minor wording changes are proposed to remove any suggestion that the SHPO is responsible for the decision: ''(a) Determine scope of identification efforts. In consultation with the SHPO/THPO and other consulting parties, the Agency Official shall (1) Determine and document the area of potential effects, as defined in § 800.16(d); etc.'' The Council agreed with this recommended amendment since it clarifies that the ultimate decision here is made by the Agency Official. However, the phrase ''and other consulting parties'' was removed from the recommended language since the obligation to consult at this stage would not extend to other consulting parties.

Section on determining Area of Potential Effect fails to include time limit for a response by SHPO or other consulting parties to an agency's determination of APE. As stated above, the agency obligation is to consult. Failure by SHPO/THPO to respond to consultation within a reasonable time would allow agency to finalize its unilateral determination of the area of potential effect and move forward in the process.

Indian Tribes are given broad discretion to designate any property to which they attach religious and cultural significance, whether or not within tribal lands, as historic in the context of the consultation process. There are no standards directly relevant to the eligibility of such properties for the National Register. The broad discretion creates great uncertainty, delay, and costs. The rule should contain criteria on designating religiously or culturally significant properties. This comment is incorrect. These properties must be ''historic properties'' and therefore meet the National Register criteria. They must follow the same process as other potentially historic properties.

Requirement to consult with SHPO regarding the APE should be deleted. It needlessly extends the already protracted consultation process without any concomitant benefits. The Council believes that consultation with SHPO is valuable at this critical point to avoid later problems. Furthermore, consultation with the SHPO/THPO at this critical decision making point has always been viewed as an important part of the process. The Council decided to retain the duty to consult with the SHPO/THPO since the Council believes that SHPO/THPOs have special expertise as to the historic areas in their jurisdiction and the idiosyncracies of such areas, and can greatly assist the Agency Official, using such expertise, in determining an accurate area of potential effects. Nevertheless, it is noted that the Federal agency is ultimately responsible for making the final determination about the area of potential effect (*i.e.,* the concurrence of the SHPO/THPO in such determination is not required).

In the case of scattered site housing rehabilitation program, the Agency Official should have the authority to determine that (1) the area of potential effect is limited to the property to be rehabilitated, and (2) any structure to be rehabilitated that is less than 50 years old is not considered eligible. The result would allow scattered site housing rehabilitation to proceed in a responsible manner without adding a time-consuming consultation process with no apparent benefit to the public or environment. The Council disagrees. Not all scattered site projects are the same. Where a block of properties are to be rehabilitated, the historic district may be affected. The less than 50 years old exemption should be handled during negotiation of a Programmatic Agreement.

Given that some of the tribes with ancestral interest in a project area are no longer physically located within the state, it is difficult or unfeasible to comply with this provision. The reg needs to set some practical limits on consulting with Tribes in identifying historic properties. The NHPA does not set such limits on consultation. The location of tribes and the boundaries of tribal lands are consequences of history to which tribes were subjected. Accordingly, the fact that a tribe may not live on or near a significant property should not be an impediment to its participation in consultation. As stated above, this is the subject of a guidance

project currently under way between the Council and the National Park Service.

The regulations should set forth a process to follow when the SHPO disagrees with an agency determination of the area of potential effects (APE)—similar to the process for determinations of eligibility. Also, we need further guidance on what is considered ''documenting'' the APE. The Council believes the process in the rule regarding APE should remain unchanged. The determination of APE should be ultimately done by the Federal agency in consultation with the SHPO. SHPO can seek informal advice from the Council. Guidance could be developed regarding what is considered ''documenting'' the APE.

Section 800.4(b)

Comments recommended that the provisions of section 106 be extended only to properties formally determined eligible, and that this section should therefore be deleted. The Council disagrees. Both the Council and the Department of the Interior have interpreted the NHPA to require section 106 consideration of all properties that are listed on the Register, as well as all those that meet the criteria of eligibility on the National Register, regardless of whether a formal determination by the Keeper has been made. Well established Department of the Interior regulations regarding formal determinations of eligibility specifically acknowledge the appropriateness of section 106 consideration of properties that Federal agencies and SHPOs determine meet the National Register criteria. See 36 CFR 63.3. The NHPA specifically defines ''historic properties'' as those that are ''included in, or eligible for inclusion on the National Register.'' 16 U.S.C. 470W(5). Not only does the statute allow this interpretation, but it is the only interpretation that reflects (1) the reality that not every single acre of land in this country has been surveyed for historic properties, and (2) the NHPA's intent to consider all properties of historic significance. It has been estimated that of the approximately 700 million acres under the jurisdiction or control of Federal agencies, more than 85 percent of these lands have not yet been investigated for historic properties. Even in investigated areas, more than half of identified properties have not been evaluated against the criteria of the National Register of Historic Places. These estimates represent only a part of the historic properties in the United States since the section 106 process affects properties both on Federal and non-Federal land. Finally, the fact that a property has never been considered by the Keeper neither diminishes its importance nor signifies that it lacks the characteristics that would qualify it for the National Register.

Rule should clarify that the section 106 process does not impose identification burdens upon the private applicant. Although identification obligations are placed on Federal agencies, in reality the burden is often passed on to the applicant through delays or conditioning the agency's decision until the applicant has funded the identification efforts. Federal agency ability to shift burden to applicant is dependent on that agency's independent authority. The section 106 rule does not confer such authority nor relieve Federal agencies of its duties. This may be an appropriate guidance topic to be developed.

Regulations fail to respect the National Register nomination and listing process and grant unbridled authority to impose section 106 requirements on properties already deemed ineligible. Properties that are determined ineligible are not subject to section 106 consideration. Revisiting eligibility determinations is encouraged on certain occasions, but not mandatory.

Any imputation of a new substantive duty under section 106 to discover unidentified properties is negated by the detailed provisions for the discovery of unknown properties contained elsewhere in NHPA. The Council disagrees. The obligation to identify during planning is different than coming across something during construction. Further obligation is limited in scope, duration and intensity. The ''discovery'' provisions of the NHPA do impose a continuing duty to survey and identify historic properties. See 16 U.S.C. 470h–2(2)(A). However, the reality is that such an effort has not reached every acre of land of this country that could be affected by a Federal undertaking, and the NHPA seeks to protect historic properties even if they had not been identified prior to the proposition of an undertaking. This is clearly reflected in the statute where it provides, for example, that agency procedures implementing the Council's section 106 rule would provide a process for identifying historic properties. 16 U.S.C. 470h–2(a)(2)(E)(ii). The NHPA would not contain this language if it believed the other, general surveying provisions were sufficient.

Since SHPOs are statutorily required to conduct comprehensive statewide surveys of historic properties (section 101(b)(3) of NHPA), Federal agencies and permit applicants should not have to be required to engage in field investigations or surveys. SHPOs should already know what historic properties exist. No. Agency obligation to ''take into account'' effects on historic properties necessarily places an affirmative duty to identify historic properties. The Council notes that the rule does not compel shifting of such agency burden to applicants. Also, please refer to the immediately preceding response.

Although proposed rule on its face may place identification efforts on Federal agencies, the reality is that these burdens are borne by applicants. This is usually done by delaying or conditioning the Federal decision until the applicant has funded the identification effort requested by the SHPO or Council. This tactic is improper and the rule should clarify that the process does not impose the burden upon applicants through either direct or indirect means, including delays. The rule does not compel shifting of this or other Federal agency burdens to applicants. Section 106 obligations lie with the Federal agency. Although Federal agencies may be requiring submissions, as a basis of accepting applications, this is not compelled by the rule.

Council only has authority to promulgate rules regarding section 106. Since section 106 does not address the identification of historic properties or evaluation of historic significance, the Council has no authority to regulate these activities. The duty to identify historic properties are placed upon Federal agencies, the Secretary of the Interior, and SHPOs under other sections of the NHPA (namely sections 101 and 110). The Council disagrees. The NHPA grants the Council the authority to promulgate regulations regarding section 106 ''in its entirety.'' 16 U.S.C. 470s. It would be impossible for an agency to take into account the effects of its undertakings on historic properties (which include those listed on the Register, as well as those eligible for listing), as section 106 requires, if it does not know what those historic properties are in the first place. Accordingly, the identification and evaluation provisions of this rule are reasonable under the authority. Also, see response to comment above regarding ongoing identification duties.

This provision for phased identification and evaluation using an MOA is inconsistent with our prior understanding that an MOA should be used exclusively to stipulate mitigation measures for properties that have been identified and fully evaluated. With this change, why would an agency do a project specific PA? Phased identification acknowledges the reality

of large projects. A programmatic agreement may be an alternative, but this provision expands the flexibility of the rule.

Section 800.4(c)

This section should be revised to overcome the current perception that agencies are required to identify every single specific property that may be affected and study each sufficiently to apply the National Register criteria. This drives up the cost of S. 106 consultation, unnecessarily delays the process, discourages consideration of indirect and cumulative effects, and complicates coordination with NEPA. The provision for phased ID and evaluation helps, but § 800.4(a) should be revised to make it clear that it is permissible to address eligibility prospectively, and to focus on ''types of properties'' rather than to identify every single property. The phased identification provisions of the rule are intended to deal with this issue. The Council intends to provide guidance regarding phasing.

Section 800.4(c)(1) is misleading in stating that tribes have ''special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.'' Their expertise is not in applying the criteria of eligibility, it is in identifying some kinds of historic properties and in identifying effects that might not be apparent to others. The current wording sets up the tribes to overrule decisions made by agencies and SHPOs. The Council clarifies that tribal expertise is not in applying the eligibility criteria per se, but in bringing a special perspective to how a property possesses religious and cultural significance. This reflects the fact that such Tribes are particularly well placed to provide insights and information on those properties of religious and cultural significance to them. It is common sense to reach out to the Tribes regarding these issues.

Requiring eligibility determination from the Keeper when SHPO disagrees with Agency Official determination gives SHPO a veto over the project. The Keeper eligibility process is so lengthy that applicants have no alternative but to go along with the SHPO's position regarding time-sensitive projects. SHPO can delay projects simply by claiming not to have sufficient information. Department of the Interior regulations require a response from the Keeper within 45 days. Those regulations also recognize the concurrent Agency/SHPO determination scheme. See 36 CFR part 63. The section 106 rule does not encourage wrongful delays by any party. Cases where an abuse of the process is suspected can always be brought to the attention of the Federal agency conducting the review and/or the Council.

Proposed rule gives Tribes the de facto ability to designate any property to which they attach religious and cultural significance as a historic property. Tribes can then pressure the Agency Official to take their concerns into account above all others. Proposed rule effectively requires Federal agencies to defer to Indian tribes on what properties are reached by section 106, and give added (if not dispositive) weight to religious considerations in that determination. The Council disagrees. Properties of religious and cultural significance to Tribes must meet the National Register criteria in order to be considered ''historic'' and subject to section 106 consideration. The fact that a Tribe attaches religious and cultural significance to them does not make them ''historic,'' but neither does it preclude them from meeting the National Register criteria. The Federal agency makes the determination of eligibility, and disputes are ultimately resolved by the Keeper based on the secular National Register criteria. The Tribe is consulted but, again, the ultimate decision in the case of a dispute with the Federal agency finding by a SHPO/THPO, is the Keeper.

The NHPA does not empower the Council to require Agency Officials to obtain a determination of eligibility from the Keeper. In fact the NHPA prohibits ''any person or local government'' from providing a nomination for inclusion of a property on the Register unless such property is located within a State where there is no SHPO. Moreover, this is redundant with 36 CFR part 63. There is no basis for requiring SHPO concurrence or agreement. Finally, the NHPA expressly prohibits the nomination of any historic property for the Register where the owner objects. 16 U.S.C. 470(a)(6). Such prohibition should be integrated into the proposed rule to reflect that when such objection is lodged with a Federal agency, they may terminate their section 106 review. The comment fails to realize that a determination of eligibility is not the same as a nomination/listing on the National Register. The Council also points out that under the NHPA, an owner's objection to a nomination/listing still can lead to the Secretary of the Interior determining the eligibility of the property. It should also be noted that this rule provides that an owner of an affected property can, and should be, invited as an additional consulting party in the section 106 process. See § 800.2(c)(6) of the rule. Finally, see responses above to the issue of Agency/SHPO concurrence determinations of eligibility.

Various comments comment suggested that in the last sentence, the word ''special'' should be changed to ''unique.'' The Council disagreed. The word ''unique'' excludes everyone else and gives the incorrect impression that Tribes have the final word that cannot really be challenged by the Agency. Also, see response above regarding the need of properties of ''religious and cultural significance'' to Tribes to meet National Register criteria in order to be considered ''historic.''

Section 800.4(d)

The addition of a 30 day waiting period, even when no historic properties are identified, is unreasonable. Suggest that the waiting period after submission to SHPO/THPO be eliminated consistent with previous regulations. The Council disagreed. This period is necessary so the consulting parties and the Council can review the finding responsibly and object if appropriate. Such review also allows mistakes to be caught in time before they potentially lead to costly litigation.

Move this subsection under § 800.5 and re-title § 800.5 to ''Assessment of Effects.'' The proposed change was rejected since these are outcomes of identification and effect assessments. However, the Council may draft guidance on the topic of assessment of effects.

Section 800.5(a)

A tribal comment stated that the exemption of properties of religious and cultural significance from the demolition by neglect provision (§ 800.5(a)(2)(vi)) is so broadly written that it could lead to the loss of National Register districts in pueblos and other Native communities. This provision had been added at the request of Indian tribes. It specifies that the exception only applies where neglect and deterioration are recognized qualities of the property. A further safety valve is that a ''no adverse effect'' determination is subjected to review by consulting parties (which would include Tribes that attach religious and cultural significance to the historic property at issue). See § 800.5(c). Lastly, the Council is not aware of this provision having been applied inappropriately or over the objections of Tribes.

Criteria of adverse effect too broad, and encompasses activities of benefit to the public. Accordingly, such activities

are delayed. Examples of such activities are: reclamation of abandoned mines, creation of wetlands, ''hazardous material remediation'' (§ 800.5(a)(2)(ii)), rehabilitation of historic properties, and provision of handicapped access. Adverse effect criteria are linked specifically to objective National Register criteria published by the National Park Service, which are used to determine characteristics that contribute to a property's historic significance. If those characteristics are adversely affected, then the historic significance is impaired. It is noted that program alternatives under § 800.14 are intended to deal with repetitive or minimal impact situations. Finally, while the listed activities may be of benefit to the public, it does not necessarily follow that such positive activities could not also cause an adverse effect on historic properties. Again, all that the section 106 process requires is that such effects be taken into account. The section 106 process does not prohibit any projects, beneficial or otherwise.

Proposed rule uses impermissibly vague and overbroad terms, in violation of the Due Process Clause. Its definition of ''adverse effects'' includes those when an undertaking ''may'' alter ''indirectly'' ''any'' of the characteristics making the property eligible in a way that would diminish the integrity of the property's ''feeling'' or ''association.'' Such definition does not give fair notice as to what it requires, and is not grounded on intelligible principles. This further complicates, expands, and lengthens the process, adding difficulties, costs and uncertainty. As stated above, adverse effect criteria are linked specifically to objective National Register criteria published by the National Park Service. The National Register criteria itself expands on the meaning of its terms and provides various examples. These criteria have been fleshed out through consideration and application countless times, over the years, since the program began, and explained through various guidance documents. For example, see National Register Bulletin 15, ''How to Apply the National Register Criteria for Evaluation,'' which includes definitions of the terms ''feeling'' and ''association.''

Criteria of adverse effect should exclude ''insignificant'' transfers of property. De minimis transfers of property are being subjected to lengthy section 106 process. The rule provides for an avenue, under § 800.14(c), whereby the appropriate agency can pursue an exemption.

The criteria of Adverse Effect is devoid of any limitations on the proximity of an undertaking to a historic site, allowing the SHPO to be inconsistent and subjective when evaluating effects. The standard set forth under section 106 is effect, not proximity. While it is possible that distance separating an undertaking from a particular historic property may remove any effects, such a determination should be made on a case by case basis, and is not suitable for a generalization. Different undertakings simply have different areas of potential effects according to several factors such as the nature of the undertaking itself, the nature of the historic property at issue and topography.

The current and proposed rule do not take into account the fact the cumulative impact of adding a monopole to areas with modern intrusions would not be an adverse effect. The proposed rules, therefore, will lead to consultative gridlock as the expansion of wireless services continues. This and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. These discussions commenced before the present rulemaking process. Such ongoing discussions are referred hereinafter as ''Telecommunications Working Group.''

Section 800.5(b)

Final decision regarding adverse effects is charged on the Agency Official. Council has no authority to impose its determination on this matter. Council may comment on the issue, but the final decision is to be made by the Agency Official. The Council has used its expertise in setting up the criteria of adverse effects on this rule. It therefore has a justifiable role and the expertise in ensuring the correct interpretation of its rule. Section 800.7 of the rule is clear in stating that the Agency Official can terminate consultation on ways to avoid, minimize or mitigate adverse effects, and request Council comments. The Agency Official can then proceed with its undertaking in any way it wants, after taking the Council's expert comments into account.

There is no basis for mandating consultation regarding adverse effects. To the extent that other sections of the NHPA require Agency Official consultation with the SHPO, these provisions are not to be implemented by section 106 regulations of the Council. The Council believes this consultation is reasonable and necessary in that it provides the Federal agency with the information and considerations needed for it to take into account the effects of its undertakings on historic properties. Consulting parties are defined in such a way as to ensure they have the necessary interest and competence in informing Federal agency decisions on historic properties. As elsewhere in the process, consultation ensures that correct and informed decisions are made and that mistakes are not overlooked. See response regarding legal authority, below.

To address agreements like Community Development Block Grant (CDBG) Programmatic Agreements, the Council should add language which recognizes situations where the specific details of future activities are unknown and the consulting parties agree that adverse effects will be avoided through review and standard mitigation measures. Such language can, and many times is, used and provided for in the Programmatic Agreements themselves. There is no need to add this language to the process under the rule to reach such agreements. As stated before, the Council has revised the rule to provide for prototype agreements, which could be particularly helpful in the CDBG context.

Section 800.5(c)

Proposed rule gives Tribes power to require further analysis (and therefore delay) under the process whenever they attach religious or cultural significance to a property. Tribes are provided the same consultative opportunities to review an agency's findings that other consulting parties are provided. The rule only encourages, but clearly does not require, the agency to reach such concurrence. See response above to comments regarding properties of ''cultural and religious significance.'' Also see section 101(d)(6)(B) of the NHPA.

Subsection (c)(1) is directly contrary to NHPA since NHPA only requires documentation when an adverse effect is found. 16 U.S.C. 470(l). This comment misreads the statute. Section 110(l) of the NHPA simply indicates that when no solution to adverse effects is reached and embodied in an agreement in accordance with this rule, the Federal agency must document its decision after considering Council comment. This is completely different than providing the documentation necessary for reviewers to understand agency decisions in the normal section 106 process, which is reasonable and not precluded by anything in the statute.

Subsection (c)(2) must clarify that a finding of adverse effect does not require consultation under section 106. The Council is provided a reasonable opportunity to comment under section 106. The Council disagrees. Section 110(l) of the NHPA explicitly indicates its blessing of the Memorandum of Agreement consultation concept when it states that when no such solution is reached in accordance with this rule, then the agency head must document its decision after considering Council comment. Furthermore, the rule clearly states that once a Federal agency has entered into such consultation, it can terminate and proceed to Council comment.

Regarding § 800.5(c)(2)(i), anytime a consulting party objects to a finding, the Federal agency should notify all consulting parties and consult again with all parties prior to seeking consultation with the Council. Regarding 5(c)(3), the Council should also notify all consulting parties of its determination. Regarding the § 800.5(c)(2)(i) point, the Council clarifies that if consultation with the objecting party leads to changes affecting other parties, the Agency should go back to them. The Council also notes that it would notify all consulting parties regarding its § 800.5(c)(3) determination.

Section 800.6(a)

The regulations grant an unconstrained authority to require mitigation to avoid adverse effects with no constraints on cost and without requiring any nexus between the mitigation and actual adverse effect. Comment is incorrect. The agency can, based on the applicant's position, refuse any mitigation measures and terminate consultation. Furthermore, the rule is quite clear in that the consultation that may lead to an agreement is to avoid, minimize or mitigate the adverse effects on the historic properties.

Rules should provide that any Adverse Effect comment should include recommendations and core criteria for mitigation to reduce the effects to No Adverse Effect. While this is permissible, the Council believed the rule should not require it as a duty of SHPO/THPO at the determination of adverse effect step. Review at that point is intended to focus on identifying whether adverse effects exist, and not to provide a full range of mitigation options.

Section 800.6(b)

Proposed rule inappropriately attempts to require parties to sign an MOA to avoid additional delays from Council comment on the undertaking. Federal Register Council has no authority to require execution of a binding contractual agreement of any kind. Section 110(l) does not mean that the Council may compel the use of MOAs. This is beyond Council authority and must be deleted from the rule. The rule does not require or compel execution of an MOA. Furthermore, section 110(l) of the NHPA explicitly indicates its endorsement of the Memorandum of Agreement (MOA) consultation concept when it states that (1) when no such solution is reached in accordance with this rule, then the agency head must document its decision after considering Council comment, and (2) when such an agreement is reached, it shall govern the undertaking and all its parts.

There is no specific time period for Council review of a MOA when Council is participating in consultation which can significantly lengthen the section 106 compliance process. Regulatory time limits or guidelines (30–45 days) should be promulgated. Similarly, there is no review time specified for Council response to the submission of an executed MOA. Recommend time limit or guidelines of 30 days. The Council consults regarding MOAs but does not ''review'' them. The Council does not review executed MOAs, so there are no delays of agency action.

Section 800.6(c)

Several comments requested changes to the rule to clarify the issue of invited signatories. The Council agreed that this section needed to be changed. The changes to the rule indicate that the Agency Official is the one that ultimately decides who is an invited signatory, and that the rights to seek amendment or termination of an MOA attach to those that actually sign the MOA.

A comment regarding 36 CFR 800.6(c)(2)(I) supported retention of the permissive ''may'' in allowing agency to invite an Indian Tribe or Native Hawaiian organization to become a signatory to a MOA, but would find a language such as ''should'' or ''shall'' to be unacceptable. Several tribal comments, on the other hand, requested that the tribes be given a signatory right. This was a major issue during the development of the 1999 rule. After careful consideration, the Administration made a policy decision that is reflected in the proposed rule. Indian tribes are not mandatory signatories to an MOA dealing with effects on historic properties off tribal lands. The Council has no new evidence to support changing that position.

SHPOs are given broad discretion to determine appropriate mitigation for an MOA, resulting in the process being unregulated. This comment is incorrect. The Federal agency has the discretion to agree or disagree with SHPO/THPO views regarding an MOA. When an agreement is not reached, the agency goes for Council comment to wrap up the process.

Section 800.7(c)

There is no authority for the Council to dictate to Federal agencies how they consider Council comments, how they document or prepare records of decisions, nor how or whether they notify the public, nor require the agency to provide the Council with the decision prior to approving the undertaking. The NHPA specifically grants the Council the authority to promulgate rules to implement section 106 in its entirety. Section 106 requires Federal agencies to give the Council a reasonable opportunity to comment. Section 110(l) of the NHPA explicitly requires the Federal agency to document its decision made pursuant to section 106. The Council is well within its authority to implement these requirements and determine how such opportunity is provided the Council, and how the required documentation is provided.

Time for Council comment should be limited to 30 days, and the Agency Official could decide to grant an extension if it so desired. The Council believes the 45 day comment period is reasonable, takes into account the reality of staff and Council workload and need for adequate consideration, and reflects a shorter time period than previous rules (the section 106 rule adopted in 1986 set a 60 day period).

Section 800.8(a)

Rule contravenes NEPA by seeking to require processing under NEPA of undertakings that have no significant or no adverse impact on historic properties. The Council emphasizes that the rule clearly does not require NEPA processing for anything. That is something the Federal agency must decide independently.

Rule contravenes NEPA in that it undermines the categorical exclusion provisions of NEPA by requiring section 106 processing for all categorically excluded Federal actions and failing to provide a compatible process for excluding from section 106 those actions that have small or insignificant impacts, thus causing waste of enormous public and private compliance resources struggling with the least measurable and least

important Federal actions. The statement is incorrect. Section 106 of the NHPA covers ''undertakings'' regardless of NEPA categorical exclusions. The NHPA and NEPA are independent statutes with separate obligations for Federal agencies. Furthermore, § 800.14(c) provides for a way that agencies can request and obtain exemptions.

Section 800.8(c)

Comments suggested need for guidance to facilitate use of provisions allowing substitution of NEPA for section 106 process. The Council is committed to develop such guidance and assist Federal agencies that desire to follow these provisions of the rule.

Any integration of the NEPA process with section 106 should allow EAs as well as EISs to constitute full compliance with section 106. Section 800.8(c) of the rule allows just that when certain reasonable standards are met. Those standards ensure that historic properties are taken into account in a manner consistent with the NHPA.

Council has no authority to prescribe rules regulating Federal agencies' use of NEPA to comply with section 106. Such an approach was rejected during the 1992 amendments. The Council notes that the NEPA coordination provisions of this rule only apply when the Federal agency independently chooses NEPA documents/process to substitute for the regular section 106 process that they would have had to follow otherwise. The Council has the authority to set conditions for an agency to substitute another process for the Council's government-wide rule.

Requirement that the NEPA documents include mitigation measures should be deleted. The Supreme Court has stated repeatedly that NEPA mandates that mitigation measures be discussed, but that there is no requirement that a detailed mitigation plan be adopted. The Council has no authority to attach such a requirement to the NEPA process. Again, the NEPA/106 substitution provisions of this rule apply only when the NEPA process is used to substitute regular section 106 process that the Federal agency would have had to follow otherwise. Nothing in the rule requires adoption of mitigation measures since the option of getting formal Council comments instead is still available.

Section 800.9(a)

It is not the responsibility of the Council to decide whether or not their procedures have been followed regarding Agency determinations. The only Council right is to expect a reasonable opportunity to comment and that its comments will be considered before the agency proceeds with the undertaking. The rule makes it clear that this is not a binding ''decision'' by the Council, but an advisory opinion (see section 202 of the NHPA). The Council, as the agency promulgating the section 106 rule, has the specific expertise and interest in opining as to whether its rule has been correctly followed.

Section 800.9(b)

The process in § 800.9(b) regarding the Council's determination of a foreclosure lies outside of the Council's authority. A finding of foreclosure is an advisory opinion within the Council's authority (see Section 202 of the NHPA). The Council, as the agency promulgating the section 106 rule, has the specific expertise and interest in opining as to whether its rule has been correctly followed.

Section 800.9(c)

Comments questioned the statutory authority for Council to promulgate regulations implementing section 110(k) of the NHPA. Section 211 of the NHPA authorizes the Council to promulgate regulations to implement section 106 in its entirety. Section 110(k) directly relates to the section 106 and what an agency must do when an applicant's actions may have precluded section 106 review. Moreover, section 110(k) specifies a requirement that the Council be consulted. The rule simply re-states Section 110(k), sets forth how the Council will be consulted, and reminds agencies of their further section 106 responsibilities.

Section 800.9(d)

Council's assertion, under § 800.9(d)(2), that it can participate in individual case reviews, however it deems appropriate, finds no support in any section of the NHPA and should be deleted. The Council changed the rule in response to this comment. The change expressly limits the role of the Council in such reviews to accord with the role already given to the Council under subpart B and parallel to that of SHPO/THPOs.

Section 800.10

A comment questioned the statutory authority for Council to promulgate regulations implementing Section 110 of the NHPA. Section 211 of the NHPA authorizes the Council to promulgate regulations to implement section 106 in its entirety. The Council notes that undertakings affecting National Historical Landmarks (NHLs) are subject to section 106 review. NHLs are ''historic properties'' listed on the National Register. The provisions of § 800.10 lay out how the Council may participate in the section 106 review of these particularly important historic properties, how the Council may request a report from the Secretary of the Interior pursuant to section 213 of the NHPA, and how the Council will provide a report to the Secretary on the outcome of the consultation.

Section 800.11(a)

NHPA section 470k limits the substance and extent of any documentation requirement dependent upon each Federal agency's authority and funding; therefore the proposed § 800.11 should be revised to clarify that the rules' documentation requirements are not mandatory but are recommended guidelines consistent with NHPA 470k and the Council's advisory role. To better comport with statutory language, § 800.11 was changed by adding language that clarifies that documentation requirements are mandatory but limited ''to the extent permitted by law and within available funds.'' 16 U.S.C. 470k. The documentation provisions remain mandatory since the Council and other reviewers simply cannot comment without a basis, which can only be provided by adequate documents. The Council believes that the document requirements are not only minimal, but should be readily available to any agency as its record supporting its decisions in the process.

When a documentation dispute is presented to the Council, it must be resolved in a timely manner. When documentation disputes are referred to the Council, the Council is committed to expeditiously providing a resolution to them. The resolution provided by the Council will include guidance as to when the relevant party should complete their review of the finding or determination at issue—taking into account how long the party disputing the documentation has had the documentation, particularly in cases where such documentation is deemed by the Council to have been adequate.

Documentation standards are extremely broad, and likely to create confusion. Specific standards should be included that reference and adopt, at a minimum, documentation sufficient to satisfy the definition of ''sacred site'' in EO 13007 (''any specific, discrete, narrowly delineated location on Federal land that is identified by'' an authoritative Indian tribal source). Documentation standards are

adequately specific and far more specific than those of past regulations. The matter about defining ''sacred sites'' is better handled through guidance. Nevertheless, the Council clarifies once more that sites, sacred or otherwise, must meet the National Register criteria in order to be considered in the section 106 process.

Questions statutory authority for Council to impose extensive documentation requirements. Section 110(l) of the NHPA requires agencies to document their section 106 decisions, but does not authorize Council to elaborate. Section 203 of the NHPA authorizes the Council to obtain information from Federal agencies, but does not require those agencies to provide the information. Section 203 of the NHPA would be meaningless if it authorized the Council to obtain documents from Federal agencies, but did not require such agencies to comply according to the law. Furthermore, the Council is within its statutory authority to promulgate regulations implementing section 106 in its entirety, in setting the rule's reasonable documentation requirements. Documenting decisions not only assures meaningful compliance with the requirement to take into account effects to historic properties, but it produces the necessary information for consulting parties to assist the Federal agency in meeting its duties. Furthermore, the Council would not have a reasonable opportunity to comment on an undertaking without having adequate documentation on the undertaking and relevant historic properties, as provided in this section of the rule.

Section 800.11(c)

It is too cumbersome for the agency to be required to consult the Secretary of the Interior and the Council every time it wishes to withhold information under this provision. This consultative process is set forth and mandated by section 304 of the NHPA. The rule simply outlines a reasonable process for the Council participation required by section 304.

Regarding § 800.11(c)(2), the Agency official should also submit to Council the views of SHPO regarding the confidentiality of information. The Council agreed and changed the rule to reflect this. SHPOs views as to confidentiality and harm to resources are relevant, and confidentiality is not limited to tribal issues.

Section 800.11(d)

Documentation level for a finding of no Historic Properties Affected is unreasonable. The Council believes the level of documentation is more than reasonable, if not minimal, since the agency should already have the listed documentation readily on hand in order to have been able to reach such a decision.

Section 800.11(e)

Section 800.11(e)(5) should require that each criteria of adverse effect be explained, whether found applicable or inapplicable, to ensure consistency in agency documentation. The Council disagreed with this proposal. Many criteria may have no relevance whatsoever to a particular project. Nevertheless, the Council believes some guidance may be warranted in the future to promote consistency in agency documentation.

Section 800.12(a)

It is not clear how the regulations apply during rehabilitation work, monitoring the emergency from a cultural resources perspective, or when to implement the regulations during emergency situations. The Council believes the rules are clear that the emergency provisions are triggered when an agency proposes an emergency undertaking in response to a declared disaster. The provisions require notification and a seven day review period.

Section 800.12(d)

Implementation time for emergency procedures should be extended from 30 days for a formally declared event to 90 days in order to allow for limited agency resources to adequately address all the issues that arise from a disaster related event. The longer an implementation time is extended, the lesser the justification for emergency, abbreviated procedures. Furthermore, the rule already allows requests for extensions of time when needed. The Council has not declined any such extension requests.

Section 800.13(b)

Agencies often do not often want to assume a new find to be National Register eligible. To address this, the comment offered a proposed change. The Council believed the suggested concept was useful and incorporated changes to the rule. The changes state that the subject of eligibility can be raised (and be considered by agency) in comments. As explained above, section 106 applies to those properties listed or eligible for listing on the National Register. This change acknowledges the importance of National Register eligibility at this point.

Section 800.13(b)(2) should be removed for the same reason that the data recovery exemption was removed from the 86 regulations. The Council disagreed. A short cut for these post-review discoveries of archaeological resources of value only for their data is necessary. The Council believes that tribal involvement will provide an adequate safeguard.

Section 800.14

The program alternative provisions are too rigid, intimidating and difficult to apply and create a one-size-fits all approach. The revised regulations should make this provision more useful so that it can be applied more productively to Federal agencies and industry. What the alternatives under § 800.14 do is to provide vehicles to tailor the section 106 process to the particular needs of each agency, agency program or group of undertakings. While the intent is to provide such flexibility in the final product, it is still essential to maintain the role of the public, preservation officers and other stakeholders in providing necessary input in shaping those products.

Section 800.14(a)

Include a provision for Council monitoring and evaluation of whether Federal agency program alternatives are working or not. Council monitoring of program alternatives should be on a regular basis, including, but not limited to, how agencies implement the ''exempted categories'' projects. Also, add a provision for the Council to publish a list of acceptable Federal Agency alternative programs and make them available to the public. Monitoring measures would be included, as appropriate, in the alternatives' agreements themselves. Regarding a list of Council approved alternatives, the Council does not need a change to its rule to publish such a list.

Since agency must submit any proposed alternate procedures for review by Council and NCSHPO, requirement for publication in the Federal Register should be eliminated. The Council disagrees. **Federal Register** notice of final adoption of these alternatives is needed to notify the public as to these changes in how Federal agencies comply with section 106.

Regarding all of § 800.14, the Council is granted no rights under the NHPA to be consulted with about Federal agency development of their procedures. Section 110(a)(2) requires consultation with the Secretary of the Interior, but not with the Council. Federal agencies

may find consultation with the Council desirable, but it is not required by the statute. The comment simply misreads section 110(a)(2) of the NHPA. That section deals with non-binding procedures that agencies may use to implement the Council's binding, section 106 regulations under 36 CFR part 800. The alternatives under section 800.14 directly modify or substitute for the Council's binding regulations regarding certain programs or undertakings, and therefore require our direct involvement. The Council believes it has the internal experience and expertise to make such evaluations. Also, the diversity of its membership ensures that a balanced perspective is brought to final determinations regarding consistency. Section 211 of the NHPA states that the Council ''is authorized to promulgate such rules and regulations as it deems necessary to govern implementation of section 106 * * * in its entirety.'' Section 110(a)(2) of the NHPA states that the ''(Federal agency historic preservation) *program[s]* shall ensure * * * that the agency's procedures for compliance with section 106 * * * are consistent with regulations issued by the Council * * *'' (emphasis added). It must be understood, among other things and upon closer examination, that section 110 of the NHPA does not specifically provide for Federal agencies to substitute their programs for the section 106 regulations promulgated by the Council. Through § 800.14 of the rule, the Council is allowing for such substitution, believing this may help agencies in their section 106 compliance. However, the Council will not allow such substitution if the agency procedures are inconsistent with the Council's 106 regulations. The Council, in its expertise, holds that its regulations correctly implement section 106, and that it would therefore be inimical to its mandate and contrary to the spirit and letter of section 100(a)(2)(E) of the NHPA, for the Council to allow inconsistent procedures to substitute the Council's section 106 regulations.

The Council should seek the views of affected SHPOs and notify them of final adoption when an Indian tribe enters into an agreement with the Council to substitute tribal regulations for Council regs. The Council notes that section 101(d)(5) of NHPA already requires such consultation with the affected SHPO, and that the Council would obviously notify such affected SHPO as to a final substitution.

Section 800.14(b)

These regulations require more steps, more paperwork, and therefore more time to process routine CDBG Programmatic Agreements. Under the new regulations, the Council must participate more actively in these highly routine and repetitive agreements; and the Council treats the activities covered by CDBG agreements as ''adverse effects.'' We request Council reconsider its procedures for routine PAs. In response to this comment, the Council agreed to provide a new procedure for routine Programmatic Agreements. See § 800.14(b)(4).

It is not clear that Programmatic Agreements under § 800.14(b)(3) are developed by an agency official in consultation with the SHPO. Additional guidance is needed beyond simply referencing § 800.6. The Council notes that the SHPO and other consulting parties must be consulted, just as they would be consulted for a Memorandum of Agreement under § 800.6.

Section 800.14(c)

The Council should modify the proposed rule to accommodate and promote voluntary habitat conservation efforts under the ESA. It should establish as an ''exempted category'', exempting from section 106 review, all voluntary incidental take and enhancement of survival permits issued by either FWS or NMFS under section 10 of the ESA. Also, approval of and voluntary participation in a ''take limitation'' or exemption created under a special conservation rule adopted by either the FWS or NMFS under section 4(d) of the ESA should also be exempted from NHPA review. These and other specific alternatives and exemptions recommended by the commenting public should be decided after the appropriate § 800.14 process is followed, and not through the rulemaking itself. The Council encourages Federal agencies to submit proposed exemptions and other alternatives.

Under § 800.14(c)(5), the Agency Official should submit the views of SHPO/THPO to the Council along with the other required documentation. The Council should also notify SHPO/THPO of the Council decision. In § 800.14(c)(7), SHPO's and others should be able to request that the Council review an Agency's activities to determine if the exemption no longer meets the criteria. The Council decided to change this section to explicitly add SHPO/THPO comments to those that need to be submitted. The Council assures the commenting public that it will notify SHPO/THPOs of final decisions regarding exemption decisions. Finally, the Council notes that anyone can request the Council to conduct a review of a program alternative without need of amendment to the rule.

Section 800.14(f)

Requiring comment from all Indian tribes is unnecessarily broad. Section 800.14(f)(1) should be amended so as to provide an appropriate government-to-government consultation with affected Indian tribes and consultation with Native Hawaiian organizations when a nationwide Programmatic Agreement is being developed, adding language to the effect that ''when a proposed program alternative has nationwide applicability, the Agency Official shall identify an appropriate government-to-government consultation with Indian tribes and consultation with Native Hawaiian organizations.'' The Council agreed with the concept and rationale of the proposed change. It therefore added language to § 800.14(f) regarding tribal consultation for nationwide agreements, while honoring the underlying intent of meaningful consultation with Indian tribes and Native Hawaiian organizations.

Section 800.16(d)

Rule is unclear, and allows area of potential effect for a one acre wetland permit, to encompass entire development site (which could be over one hundred acres). The area of potential effects should be the one acre of wetland. Vagueness of rule leaves applicants vulnerable to high costs and long permit delays. The issue of area of potential effects and wetlands permits is one that needs to be worked out between the Council and the Corps of Engineers. The Council notes that section 106 requires Federal agencies to take into account the effects of undertakings on historic properties. An undertaking is defined by the statute to include a ''*project* (or) activity * * * requiring a Federal permit, license or approval.'' The effects to be considered are those of the ''project'' that required the permit. Moreover, in most instances the effects of projects are felt by historic properties beyond the immediate footprint of a project. To illustrate, a historic property whose integrity would be affected by increased noise is affected even though it is not itself located on the site of the source of that noise. The Federal agency must take into account such effects. Having said this, the Council understands the need for guidance on the subject of establishing areas of potential effects regarding the

particular concerns reflected in this comment and others. The Council will be developing such guidance.

Definition of APE is too broad, adding expense for surveys (usually borne by applicants), and unlawfully encompassing private or State lands. See answer above. Also, section 106 requires Federal agencies to take into account effects on historic properties regardless of whether they are located in private or public lands.

Section 800.16(e)

To the extent the Council seeks to prescribe a role for SHPOs, this definition should include in the alternative the comments of the SHPO. The comment is incorrect. The term ''comment,'' as use on the rule, means the formal comments by the Council. The SHPO is never entrusted with that responsibility. The SHPO role through the process comes from its assistance responsibilities in the section 106 process (see section 101(b) of the NHPA).

Section 800.16(I)

The definition of effect should be consistent with language used to define area of potential effect (§ 800.16(d)) and the criteria of adverse effect (§ 800.5(a)(1)). The Council agreed and, for consistency, changed the rule so that the ''alterations'' is used for both definitions.

Section 800.16(w)

Several comments requested the Council to revise the rule to distinguish between section 101(d)(2), NPS approved THPOs and non-101(d)(2) tribes. They strongly recommend that different terms be used for these two types of tribes in order to more clearly reflect their different authorities on tribal lands. The Council agreed and changed the rule accordingly. In summary, the Council (1) deleted the reference to non-101(d)(2) tribes from the definition of ''THPOs'' on this section of the rule, and (2) revised the language regarding these consulting parties under section of § 800.2(c).

Section 800.16(x)

A definition of ''dependent Indian communities'' for the purposes of this regulation is needed. Folks need a legal definition from the Council. The Council used the definition of Indian tribes provided by the statute. The Council will bring this issue to the attention of the Department of the Interior and work on clarification.

Section 800.16(y)

The term ''undertaking'' needs to be better defined within the regulation so as to clearly eliminate actions with no potential to affect historic properties. Section 800.3(a)(1) provides at the beginning of the process that Federal agencies have no further section 106 responsibilities if the undertaking is not a type of activity that has the potential to affect historic properties.

Various comments requested in different forms that the Council should clarify that Federal funding is a condition precedent to the application of the section 106 process. The Council notes that there is case law supporting that position as well as case law stating that funding is not a prerequisite. The Council has maintained the statutory definition of ''undertaking,'' verbatim, in the regulations. The Agency Official is responsible, in accordance with § 800.3(a), for making the determination as to whether a proposed Federal action is an undertaking. As appropriate, an agency should examine the nature of its Federal involvement taking into consideration factors such as the degree of Federal agency control or discretion; the type of Federal involvement or link to the action; and whether or not the action could move forward without Federal involvement. An agency should seek the advice of the Council when uncertain about whether or not its action falls within the definition of an undertaking.

Do not want incidental take permits (ITPs) under the Endangered Species Act to be subject to section 106 review. As stated before, the Council notes that this and other specific alternatives and exemptions should be decided after the appropriate § 800.14 process is followed and not through rulemaking itself. The Council encourages Federal agencies to submit proposed exemptions and other alternatives.

Various comments argued in various forms that Surface Mining Control and Reclamation Act (SMCRA) permits issued by States, after Office of Surface Mining (OSM) delegation of the program, are not subject to the section 106 process. The Council believes that it is the responsibility of the Federal agency, rather than the State, to comply with section 106. The Council intends to continue working with OSM to develop and finalize a solution to this issue.

The proposed rule does not apply to the siting of wireless facilities, since the construction of communications towers does not constitute a Federal undertaking. As stated before, this and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. These discussions commenced before the present rulemaking process. Such ongoing discussions are referred hereinafter as ''Telecommunications Working Group.''

Appendix A

Various comments stated that Council participation in consultation should be mandatory when requested by a tribe, particularly because tribes are not mandatory signatories off tribal lands. The Council disagreed. The Council needs to retain discretion, just as it has in any other Section 106 reviews. Such discretion is necessary not only to allow the Council to manage its limited resources, but also to further encourage the goal of Agency and SHPO/THPO independence in the process. We have no evidence that this discretion is not being exercised appropriately.

The Council should change its rule to allow it to comment on the most important cases, involving the SHPOs/THPOs in an advisory capacity, not a managerial role. The Council believes the rule accomplishes this. Under the rule, the Council only gets involved in some of the cases meeting Appendix A criteria. The rule requires the Council to explain how such criteria is met before entering consultation, and provides SHPOs/THPOs with an advisory role.

General Consultation

THE COUNCIL'S ''HANDBOOK ON TREATMENT OF ARCHAEOLOGICAL PROPERTIES'' IS WOEFULLY OUT OF DATE AND SHOULD BE UPDATED AS SOON AS POSSIBLE. ALSO ''PREPARING AGREEMENT DOCUMENTS'' SHOULD BE REVISED TO REFLECT THE CHANGES IN THE NEW REGULATIONS. THE COUNCIL SHOULD ALSO EXPLORE ESTABLISHING PEER REVIEW SYSTEMS IN RESOLVING DISPUTES THAT INVOLVE THE IDENTIFICATION, EVALUATION AND/OR TREATMENT OF ARCHAEOLOGICAL SITES. The Council agrees that the mentioned documents should be updated. Regarding the establishment of peer review systems, such an option could be explored.

Overly burdensome consultation requirements. Commenter cites seven different points of notification or consultation even when there are no historic properties present, and a dozen or more if there should be historic properties, resulting in unnecessary delays for thousands of routine projects. The commenter estimates that implementation and documentation of the numerous consultation points

requires ¼ to ½ FTE on every National Forest in the Southwest. The rule provides for ways to tailor the process. The Council notes that a Programmatic Agreement under Section 800.14 should be suggested to the Forest Service. Such Programmatic Agreements have proved effective in the past in further streamlining and fitting the section 106 process to the particular needs of agency programs. The comment also raised an issue on the number of consultation points for situations where there are no historic properties affected. Consultation is necessary for an agency to learn whether historic properties are present or not, and then whether and how those present would be affected. Section 106, again, requires the effects of undertakings on historic properties be taken into account. For that to happen, there has to be a process for identifying the properties and assessing the effects on such properties. As stated before, Section 800.14 presents several options an agency can pursue to advance an alternative way of complying with Section 106 which better fits the realities of their particular programs.

Some SHPO's have attempted to implement the Council's proposed Part 800 rules by treating the regulations as a springboard for additional, mandatory compliance steps and unreasonable documentation requirements that only serve to delay the review process. Clarify that SHPO's must follow proposed part 800's regulatory deadlines. Please refer to earlier responses regarding the 30 day time limits, above.

Proposed rules discourage SHPOs/THPOs from consulting with private sector companies and individuals seeking consultation regarding their projects. Government to government consultation if invoked by Tribes may prevent historic preservation matters from receiving their full consideration. As stated before, the rule has been changed to facilitate Federal agency authorizations for applicants to initiate the section 106 process. Government-to-government relationships between the Federal Government and Tribes is based on Presidential Memoranda, Executive Order 13084, treaties, and statutes. Furthermore, the Council believes that consultation with Tribes assures full consideration regarding historic properties on tribal lands or of significance to tribes.

Numerous provisions of proposed rule attempt to confer upon SHPO consultation, agreement (i.e., concurrence) or virtual veto powers. Section 106 does not mention any role for the SHPOs, let alone a requirement that the SHPO concur in agency determinations. SHPO's responsibilities, like the Council, are to assist and to advise. Proposed rule confers unauthorized powers on SHPOs and the Council, and result in additional administrative requirements and delays. The SHPO's role is limited in the rule to consulting and advising, based in their responsibilities pursuant to section 101(b)(3) of the NHPA. When a step calls for concurrence, SHPO concurrence can end the process from further evaluation. When the SHPO does not concur, a project is not vetoed; rather, the Federal agency is moved to the next, logical step in the process. Nothing in the rule gives anyone veto power over an undertaking. The Federal agency ultimately decides by itself what to do with the undertaking, once it has complied with its Section 106 responsibilities.

Council should confirm that SHPOs have no legal authority over private parties. Neither the Council nor this rule gives SHPOs the legal authority to require any action from private parties.

Nothing in the NHPA requires that every party that finds preservation to be interesting to be given a formal role in the section 106 process, with the ability to delay or derail Federal undertakings. The Council agrees, and believes that the rule reflects that regarding who are consulting parties and how the Federal agency can control who becomes an additional consulting party.

Proposed rules provide a mechanism for a Federal agency to proceed over the objections of SHPO/THPO or without an MOA, however, the Federal agency and its regulatees would have already paid a steep price for their efforts through project delays, duplicative legal reviews and other expenses associated with earlier consultation with SHPOs, THPOs, and ACHP. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment. Just as with NEPA and other laws, Federal agency compliance with such obligations necessarily requires effort and time. Through various methods, such as time limits and program alternatives (which give Federal agencies the tools to further streamline and adapt the process to their needs), the Council has provided for cutting down such compliance costs.

Federal agencies often have no cultural resources expertise and therefore rely on SHPO to make findings for them. Although Council staff has urged SHPO offices not to be forced into this position, it is just too much work to get agencies to obtain the necessary expertise. This is an important program issue, but not a regulatory one. The Council and the National Park Service should work with agencies in this area.

Additional guidance may be needed to further clarify the roles of participating parties in the consultation process. The Council agrees that such guidance should be developed.

The length of the comment periods are well founded and prudent because they insures that the parties respond in a timely manner. The rule also clarifies and emphasizes opportunities for Tribes, Native American organizations, and the interested public to participate in consultation. The Council agrees.

General Negative

The regulations have strayed from the consultation and advisory process envisioned by Congress for ''nationally significant historic sites.'' It is evidenced by Congress' enactment of section 101(a) of the NHPA that a site does not have to be of ''national'' significance in order to meet National Register criteria and be considered under section 106 review (sites of State or local significance can meet the criteria as well).

Section 106 process is unnecessary because it duplicates an existing local zoning review/approval process for radio towers (a process that considers the impact that proposed towers might have on nearby historic properties). Therefore, it imposes unnecessary costs on carriers, and those costs are invariably passed on to the consumers. Congress has determined that local governments—not the Federal Government—should resolve such issues as the location, height and design of communications facilities. While certain local zoning measures may address historic preservation concerns, Federal agency undertakings are still subject to section 106. The NHPA does not relieve them of this duty. As stated before, this and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. One objective of this exercise is to better coordinate Federal and local review processes. These discussions commenced before the present rulemaking process.

Instead of imposing overly-detailed proscriptive regulations that are difficult to understand and enforce, the Council should work with agencies and others to develop incentive programs that encourage innovative and effective

protection and preservation procedures. These could encourage compliance much more efficiently than the present enforcement model. This can be done pursuant to the program alternatives under § 800.14 of the rule.

Council should suspend this rulemaking, and develop a new rule that contains: (1) Procedures that the Federal and State agencies can process and apply; (2) provisions that assign burdens and responsibilities that non-Federal entities can understand and reasonably support; and (3) an approach to preservation that equitably apportions responsibility and cost, and provides positive incentives for compliance. The Council believes the rule presents reasonable procedures that Federal agencies can process and apply. The vast majority of the thousands of section 106 reviews under the current and past rules have been conducted and concluded by Federal agencies without serious problems. The fact that disagreements sometimes arise regarding certain findings and determinations does not mean the process cannot be applied but, rather, reflects that it is being applied correctly. Disagreements and working out solutions is simply a part of a consultative process. The Council notes that, like section 106 itself, the rule only place requirements on Federal agencies. The incentive for Federal agency compliance, beyond meeting legal obligations set by the NHPA, is the furtherance of the historic preservation policies of the Federal Government, as expressed in the NHPA.

I do not think that the 1999 regulations have resulted in, or will in the foreseeable future result in, much streamlining of the process. The reduction in Council involvement has created a void. SHPOs do not carry sufficient respect to fill that authority void. I recommend that the regulations require the Council be notified as soon as either the Agency official or the SHPO expresses an opinion that an effect will be adverse; and that the Council be a signatory to all MOAs and PAs. The notification requirement is already in the rule (see § 800.6(a)(1)). The Council will not become a signatory to all MOAs, since a decision has been made to streamline the process by relying more on the Federal agency and SHPO/THPO for routine cases.

General Positive

General positive comments are summarized below, without a Council response beyond stating its agreement.

A comment asked that the Council refrain from further restricting public participation or ''other consulting party'' involvement in any way. It also ask, that the Council not vest any further authority in the SHPO or reduce the involvement of SHPOs, THPOs, and other consulting parties in agency decision making.

Other comments stated that: (1) the elimination of the distinction between ''no historic properties'' and ''no effect'' was a move in the right direction; (2) the rule is working well and that positive responses by certain Federal agencies had been noted; (3) the rule is very specific and provides sound guidance for federal agencies and other parties; (4) the rule clearly establishes the roles and responsibilities of the parties; (4) the rule works well and provides an efficient framework for the administration of the Act; (5) project review has been streamlined by reducing the need for Council review; (6) the rule is operating well, has appropriately defined the role of Federal agencies as the responsible party for section 106 compliance, achieves the objective of streamlining the process, and incorporates changes enacted in the 1992 amendments; (7) Federal agencies are beginning to assume their appropriate role as the lead in the process, and the Council can focus on difficult cases and problem agencies; (8) the rules are an improvement over the 1986 regs; (9) the rule offers a constructive framework for consultation among SHPO, tribes and all interested parties.

Miscellaneous

Since implementing NHPA necessarily affects the agencies' regulatees, FCC recommends that the proposed rule include a ''reasonable'' time period for Federal agencies to develop their own implementing procedures. Federal agencies have always had the authority to develop implementing procedures pursuant to section 110(a)(2)(E). The Council has no role in setting deadlines for Federal agencies to develop these implementing procedures.

The deadlines for response from Council and SHPOs (15 days and 30 days) are reasonable—assuming adequate personnel to handle the workload. Because SHPO's are inadequately funded, they are understaffed to meet these time frames. Therefore, a 30 day review period for the Council and a 45-day review period for SHPOs is recommended. The Council disagrees. The current deadlines adequately balance the project need for expediency and the workloads of the Council and SHPO/THPOs.

General Tribal

In requesting that the role of THPO's and tribal representatives be clarified for those situations affecting properties of religious and cultural significance off tribal land, it is suggested that section 101(d)(2) limits THPO responsibilities and authority to tribal lands and does not require a Federal agency to consult with those tribes regarding properties of religious and cultural significance. The Council disagrees. Section 101(d)(6)(B) of the NHPA requires tribal consultation regarding historic properties of religious and cultural significance. Nothing in the statute makes a distinction that would limit such consultation to tribal lands.

It is inappropriate and illegal for Council to implement 1992 amendments regarding Indian Tribes through its proposed rule. Section 106 itself was not amended, and the Secretary of the Interior is the agency charged with promulgating regulations to implement the tribe-related amendments. The comment misreads the NHPA. The rule appropriately deals with tribal requirements as they directly relate to the section 106 process. The Council is authorized to promulgate rules to govern the implementation of section 106 ''in its entirety.'' This authority necessarily covers all aspects that directly relate to the section 106 process. The 1992 amendments require Federal agencies to consult with tribes and Native Hawaiian Organizations in carrying out their Section 106 responsibilities. While the Department of the Interior provides assistance to tribes and fosters communication among tribes, SHPOs and agencies, it does not oversee the section 106 process nor have the requisite authority. It is noted that the Department of the Interior sits on the Council and voted in favor of adopting this rule.

Several THPOs have begun to request payment of fees for Section 106 consultation and have asserted THPO powers outside of tribal lands. Council could remove uncertainty and avoid delays by clarifying that THPOs are bound by the same rules as SHPOs and THPO authority extends only over tribal lands. This is a topic being addressed by the ongoing Telecommunications Working Group. Once the Council reaches a decision on this matter, it will be disseminated.

Concerned about several THPOs and tribal representatives requesting payment for the section 106 consultation required in the regulations and believes such actions are contrary to the regulations. This issue was raised by the wireless industry, and will be

addressed by the Telecommunications Working Group.

We would not support changes to grant expanded authority to tribes off tribal lands. We strongly support current provisions which enable tribes to participate, as appropriate. The Council agrees with this comment and did not expand the tribal role in this rule.

The proposed rule will impact us resulting in the consultation with Native Hawaiian organizations. The requirement for consultation with Native Hawaiian organizations will require expenditure of time and funds spent on EIS studies. The rule fails to specify which Hawaiian Native organizations (NHO) we would have to consult with, which may be many. The statute requires Federal agencies to conduct such consultation. The rule is not the appropriate venue for identifying specific NHOs. That is the responsibility of the Federal agency based on the potential to affect properties of significance to specific organizations.

E.O. 13084 has language that should be utilized in the section 106 process. EO 13084 addresses the development of Federal agency policies and regulations. The Council rule addresses individual projects and programs, and not these overall policies and rules developed by other agencies.

The regulations took a positive step regarding tribal input and participation. It works when the agency is truly in compliance with the regulations. Need to work on how tribes can be more involved; are legally involved in decision making without a specific agreement; and can be funded to conduct the work demanded by agencies and the regulations. The Council is developing guidance on tribal consultation.

The regulations conflict with the language and purpose of the Act by creating an artificial distinction between tribal properties depending on their location (on or off tribal lands). Tribes are provided lesser consultation rights where traditional cultural properties are located off tribal lands. The rule acknowledges tribal sovereignty on tribal lands, which necessarily distinguishes a tribe's role on and off tribal lands. The rule does not distinguish where properties are located, but only the scope of tribal involvement.

The regulations suggest that tribal governments and the interested public are at the same level of importance. This concept ignores the sovereign status of tribes and, as a result, Federal agencies are disrespecting some tribal treaties. An important statement of the tribal government role is missing. With the public on the same level as tribes, the public can gain access to documents that may compromise the confidentiality provisions of section 106. The Council disagrees. Section 800.2(c)(3) of the rule provides information for Federal agencies regarding sovereignty and the government-to-government responsibility. The public is simply notified and involved as appropriate but, unlike tribes in their land or regarding historic properties of significance to them, is not an entitled consulting party.

Legal Authority

Several comments questioned the Council's legal authority to issue the rule. The main arguments were that: (1) The Council was given advisory functions by the statute, and that the proposed rule transformed the role of the Council from purely advisory to one with substantive regulatory authority over other Federal agencies and parties; (2) the Council could only issue regulations regarding how it issued its comments (from the ''reasonable opportunity to comment'' provided by section 106); and (3) there was no statutory basis for a rule that dictates how an agency takes into account the effects of its undertakings or the Council's comments.

The Council believes that the rule is properly characterized as one providing a process to be followed. Nowhere does the rule impose an outcome on a Federal agency as to how it will decide whether or not to approve an undertaking, or how. The rule merely provides a process that assures that the Federal agency takes into account the effects of the undertaking on historic properties. It does not impose in any way whatsoever how such consideration will affect the final decision of the Federal agency on the undertaking. The rule does not provide anyone with a veto power over an undertaking.

Furthermore, the Council believes it has the authority to promulgate the present rule. Section 211 of the NHPA states that: ''The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of [the NHPA] in its entirety.'' The phrase ''in its entirety'' was added by the 1992 amendments to the NHPA. Directly talking to the meaning of the ''in its entirety'' amendment, the summary of the amendments stated that: ''This makes clear that the ACHP has the authority to define not only how agencies will afford the Council a reasonable opportunity to comment, but also how agencies should take effects on historic properties into account in their planning.'' Congressional Record, Senate, S 3575, March 19, 1991. This amendment was specifically introduced to address the authority issues raised earlier. Thus, it is clear that Congress has given the Council the authority to promulgate rules, such as the present one, setting forth how Federal agencies are to meet all their section 106 responsibilities to take into account the effects of their undertakings on historic properties, as well as to provide the Council with a reasonable opportunity to comment.

Moreover, the rule is solidly based on the requirements of the statute and, as Congress intended, provides a predictable framework which fleshes out those requirements. As stated before, section 106 specifically requires Federal agencies to take into account the effects of their undertakings on historic properties. 16 U.S.C. 470f. The first general step in the process under the rule requires Federal agencies to identify the historic properties that may be affected by the undertaking. 36 CFR 800.4. It is simply impossible for an agency to take into account the effects of its undertaking on historic properties if it does not even know what those historic properties are in the first place.

The second general step in the process is for the Federal agency to assess the effects of the undertaking on the historic property. 36 CFR 800.5. Again, an agency cannot take into account effects on historic properties if it does not first assess the nature of those effects. The Council has utilized its considered expertise on historic preservation to create the criteria of adverse effect that guides the end of this step.

The third general step in the process under the challenged rule is to consult to attempt resolving adverse effects to historic properties (through what is called a Memorandum of Agreement), if it has been determined the effects are actually adverse. 36 CFR 800.6. Such an approach is explicitly sanctioned by the statute under Section 110(l) of the National Historic Preservation Act. 16 U.S.C. 470h–2(l). Specifically, Section 110(l) of the statute states that:

> With respect to any undertaking subject to section 106 which adversely affects any [historic property], *and for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of such agency shall document any decision made pursuant to section 106. . . . Where a section 106 memorandum of agreement has been executed with respect to an undertaking,*

such memorandum shall govern the undertaking and all its parts.

Id. (emphasis added). It bears mentioning that this section was amended by Congress after the section 106 rule that went into effect in 1999. The amendment further conformed the statute to that 1999 rule, which was used as the proposal in the present rulemaking. Specifically, section 5(a)(8) of HR 834, amended the language of section 110(l) by striking ''with the Council'' and inserting ''pursuant to regulations issued by the Council.''

In the last general step in the process, the Council issues comments to the Federal agencies that fail to resolve adverse effects. Such a step is obviously contemplated in the requirements of section 106 that the Council be given ''a reasonable opportunity to comment.'' 16 U.S.C. 470f.

The rule does provide for consultation with various parties throughout the process. Such consultation requirements with State Historic Preservation Officers, Tribal Historic Preservation Officers and certain federally recognized Indian Tribes and Native Hawaiian Organizations are solidly anchored on statutory requirements that Federal agencies consult with such parties. *See e.g.* 16 U.S.C. 470a(b)(3)(I), 470a(d)(2), and 470a(d)(6)(B). The general public is also given a general role under the rule, although such role does not rise to the level of that of consulting parties. The Council believes this role for the public is reasonable and authorized. The Federal agency's consideration of how its undertaking affects historic properties is enhanced and better informed by the participation of the consulting parties and the general public, for whose enjoyment and enrichment the NHPA seeks to protect historic properties. It must be kept in mind that such public is the one that lives in the communities and areas where the historic properties are located, and therefore may have uniquely informed viewpoints as to such properties. As stated above, the rule specifically states that Federal agencies can use their own procedures for public involvement in lieu of those under subpart B of this rule, so long as they provide adequate opportunities consistent with the rule. Such procedural consistency is no more than what the NHPA requires under 16 U.S.C. 470h–2(a)(2)(E).

Appointments Clause

Some comments argued that the present rulemaking process violates the Appointments Clause of the Constitution. This argument is summarized as follows: (a) The section 106 rule that went into effect in 1999 (1999 rule) was developed and adopted in violation of the Appointments Clause due to the participation of the Chairman of the National Trust on Historic Preservation (the Trust) and the President of the National Conference of State Historic Preservation Officers (NCSHPO) (both of whom are members of the Council not appointed by the President) in the development and adoption of that 1999 rule; and (b) since the content of that 1999 rule was used as the proposed rule in the present rulemaking, the present rulemaking process is incurably tainted and unconstitutional.

The Council strongly disagrees with such arguments. As has been stated before, the Trust and NCSHPO have not participated in any way whatsoever in the deliberations, decisions, votes, or any other Council activities related to this rulemaking. On June 23, 2000, the Council membership, minus the representatives of the Trust and NCSHPO, took a new vote on the adoption of the 1999 rule. It voted 16–0 in favor of the 1999 rule. As has been stated above, that 1999 rule was the culmination of six years of work by the Council members, Council staff, public comments and public meetings.

Again without the participation of the representatives of the Trust and NCSHPO, the Council proceeded to vote unanimously in favor of proceeding with the present rulemaking process, using the text of the 1999 rule as the proposed rule. Many of these Council members (all Presidential appointees) had participated in the drafting and original, unanimous adoption of the 1999 rule on February of 1999. On June 23, 2000, they decided to use that 1999 rule as the proposed rule. On November 17, 2000, after taking into account public comment and changing the proposed rule as they deemed appropriate, these Presidentially appointed Council members (without the participation of the representatives of the Trust and NCSHPO) voted to adopt the final rule now being published.

Any prior involvement in the rule does not represent the exercise of significant authority pursuant to the laws of the United States contemplated by the Appointments Clause. The Presidential appointees considering the draft, proposed rule during the 2000 rulemaking process were at full liberty to vote against it, amend it, or adopt it. In the end, the final decision to move forward with such draft was in their power.

In the present rulemaking, any act that could arguably be deemed an exercise of significant authority has been carried out solely by the Council's Presidential appointees.

Other Legal Issues

Certain comments indicated a belief that the proposed rule violates the Establishment Clause of the Constitution. The arguments stated that to the extent the proposed rule requires Federal agencies to conform their decisionmaking under section 106 based on the ''religious and cultural significance'' of properties (as determined by Tribes) it results in an excessive entanglement between the government and religion, impermissibly restricts the use of public lands on the basis of religion, and impermissibly establishes or favors religion, in violation of the Establishment Clause.

The Council strongly disagrees. The rule does not require Federal agencies to conform their decisionmaking based on the religious and cultural significance of properties. As stated before, the NHPA and the rule only clarify that properties of religious and cultural significance to Tribes ''*may* be determined to be eligible for inclusion on the National Register.'' section 101(d)(6)(A) of the NHPA. Like any other property of any kind, in order for properties with such significance to be considered in the section 106 process, they must first meet the established, objective, secular criteria of the National Register of Historic Places. The determination as to whether a property meets that criteria is made by the Federal agency in concurrence with the SHPO/THPO or, in the case of disagreement, by the Keeper of the National Register. Furthermore, once a historic property has been so identified, all that Federal agencies are required to do is to take into account the effects of their undertaking on such property. Nothing whatsoever in the rule imposes an obligation on the Federal agency to change, reject or approve an undertaking based on the religious and cultural significance of a property.

The rule and section 101(d)(6) of the NHPA only require consultation with Indian Tribes regarding those historic properties of significance to them. The Federal agency must consult with such Tribes, but is nowhere required to abide by the opinions expressed by the Tribes in such consultations. Furthermore, such consultation provisions are fully justified and reasonable. They do not provide Tribes with a ''special treatment,'' but rather a rational treatment. Just as it would be common sense for a person to consult, for example, with the Navy in order to seek a better understanding of the history of

Pearl Harbor, it is more than rational to go to Tribes to seek a better understanding of historic properties to which they attach a religious and cultural significance. Due to their history and experience with such properties, such Tribes are in a specially advantageous position to provide valuable information about them. At the very least, the Council believes that these Tribal consultation provisions of the rule and of section 101(d)(6) of the NHPA are tied rationally to the fulfillment of the Federal Government's unique obligations towards Tribes. See *Morton* v. *Mancari*, 417 U.S. 535 (1974).

IV. Description of Meaning and Intent of Specific Sections

The following information clarifies the meaning and intent behind particular sections of the final rule.

Subpart A—Purposes and Participants

Section 800.1(b). This section makes clear that references in the section 106 regulations are not intended to give any additional authority to implementing guidelines, policies or procedures issued by any other Federal agency. Where such provisions are cited, they are simply to assist users in finding related guidance, which is non-binding, or requirements of related laws, which may be mandatory depending on the particular law itself.

Section 800.1(c). The purpose of this section is to emphasize the flexibility an Agency Official has in carrying out the steps of the section 106 process, while acknowledging that early initiation of the process is essential and that actions taken to meet the procedural requirements must not restrict the effective consideration of alternatives related to historic preservation issues in later stages of the process.

Section 800.2(a). The term ''Agency Official'' is intended to include those Federal officials who have the effective decision making authority for an undertaking. This means the ability to agree to such actions as may be necessary to comply with section 106 and to ensure that any commitments made as a result of the section 106 process are indeed carried out. This authority and the legal responsibilities under section 106 may be assumed by non-Federal officials only when there is clear authority for such an arrangement under Federal law, such as under certain programs administered by the Department of Housing and Urban Development. This subsection indicates that the Federal Agency must ensure that the Agency Official ''takes . . . financial responsibility for section 106 compliance . . .'' This phrase is not to be construed as prohibiting Federal agencies from passing certain section 106 compliance costs to applicants. Such a construction of the regulation would contravene section 110(g) of the NHPA and 16 U.S.C. 469c–2. The intent behind the reference to ''financial responsibility'' in the regulation is, as stated above, to ensure that the Agency Official has the effective decision making authority for an undertaking.

Section 800.2(a)(1). This reference to the Secretary's professional standards is intended to remind Federal agencies that this independent but related provision of the Act may affect their compliance with section 106.

Section 800.2(a)(2). This provision allows, but does not require, Federal agencies to designate a lead agency for section 106 compliance purposes. The lead agency carries out the duties of the Agency Official for all aspects of the undertaking. The other Federal agencies may assist the lead agency as they mutually agree. When compliance is completed, the other Federal agencies may use the outcome to document their own compliance with section 106 and must implement any provisions that apply to them. This provision does not prohibit an agency to independently pursue compliance with section 106 for its obligations under section 106, although this should be carefully coordinated with the lead agency. A lead agency can sign the Memorandum of Agreement for other agencies, so long as that is part of the agreement among the agencies for creating the lead agency arrangement. It should also be clear in the Memorandum of Agreement.

Section 800.2(a)(4). This section sets forth the general concepts of consultation. It identifies the duty of Federal agencies to consult with other partes at various steps in the section 106 process and acknowledges that consultation varies depending on a variety of factors. It also encourages agencies to coordinate section 106 consultation with that required under other Federal laws and to use existing agency processes to promote efficiency.

Section 800.2(b). The Council will generally not review the determinations and decisions reached in accordance with these regulations by the Agency Official and appropriate consulting parties and not participate in the review of most section 106 cases. However, because the statutory obligation of the Federal agency is to afford the Council a reasonable opportunity to comment on its undertaking's effects upon historic properties, the Council will oversee the section 106 process and formally become a party in individual consultations when it determines there are sufficient grounds to do so. These are set forth in Appendix A. The Council also will provide participants in the section 106 process with its advice and guidance in order to facilitate completion of the section 106 review.

Section 800.2(c). This section sets a standard for involving various consulting parties. The objective is to provide parties with an effective opportunity to participate in the section 106 process, relative to the interest they have to the historic preservation issues at hand.

Section 800.2(c)(1). This section recognizes the central role of the SHPO in working with the Agency Official on section 106 compliance in most cases. It also delineates the manner in which the SHPO may get involved in the section 106 process when a THPO has assumed SHPO functions on tribal lands.

Section 800.2(c)(2). The role of THPO was created in the 1992 amendments to the Act. This section tracks the statutory provision relating to THPO assumption of the SHPO's section 106 role on tribal lands. In such circumstances, the THPO substitutes for the SHPO and the SHPO participates in the section 106 process only as specified in 800.2(c)(1) or as a member of the public. This section also specifies that in those instances where an undertaking occurs on or affects properties on tribal lands and a tribe has not officially assumed the SHPO's section 106 responsibilities on those lands, the Agency Official still consults with the SHPO, but also consults with a representative designated by the Indian tribe. Such designation is made in accordance with tribal law and procedures. However, if the tribe has not designated such a representative, the Agency Official would consult with the tribe's chief elected official, such as the tribal chairman.

Section 800.2(c)(3). This section embodies the statutory requirement for Federal agencies to consult with Indian tribes and Native Hawaiian organizations throughout the section 106 process when they attach religious and cultural significance to historic properties that may be affected by an undertaking. It is intended to promote continuing and effective consultation with those parties throughout the section 106 process. Such consultation is intended to be conducted in a manner that is fully cognizant of the legal rights of Indian tribes and that is sensitive to their cultural traditions and practices.

Section 800.2(c)(3)(i). This subsection has two main purposes. First, it emphasizes the importance of involving Indian tribes and Native Hawaiian organizations early and fully at all stages of the section 106 process.

Second, Federal agencies should solicit tribal views in a manner that is sensitive to the governmental structures of the tribes, recognizing that confidentiality and communication issues may require Federal agencies to allow more time for the exchange of information. Also, this section states that the Agency Official must make a ''reasonable and good faith effort'' to identify interested tribes and Native Hawaiian organizations. This means that the Agency Official may have to look beyond reservations and tribal lands in the project's vicinity to seek information on tribes that had been historically located in the area, but are no longer there.

Section 800.2(c)(3)(iii). This subsection emphasizes the need to consult with Indian tribes on a government-to-government basis. The Agency Official must consult with the appropriate tribal representative, who must be selected or designated by the tribe to speak on behalf of the tribe. Matters of protocol are important to Indian tribes. Indian tribes and Native Hawaiian organization may be reluctant to share information about properties to which they attach religious and cultural significance. Federal agencies should recognize this and be willing to identify historic properties without compromising concerns about confidentiality. The Agency Official should also be sensitive to the internal workings of a tribe and allow the time necessary for the tribal decision making process to operate.

Section 800.2(c)(3)(iv). This subsection reminds Federal agencies of the statutory duty to consult with Indian tribes and Native Hawaiian organizations whether or not the undertaking or its effects occur on tribal land. Agencies should be particularly sensitive in identifying areas of traditional association with tribes or a Native Hawaiian organizations, where historic properties to which they attach religious and cultural significance may be found.

Section 800.2(c)(3)(v). Some Federal agencies have or may want to develop special working relationships with Indian tribes or Native Hawaiian organization to provide specific arrangements for how they will adhere to the steps in the section 106 process and enhance the participation of tribes and Native Hawaiian organizations. Such agreements are not mandatory; they may be negotiated at the discretion of Federal agencies. The agreements cannot diminish the rights set forth in the regulations for other parties, such as the SHPO, without that party's express consent.

Section 800.2(c)(3)(vi). The signature of tribes is required where a Memorandum of Agreement concerns tribal lands. However, if a tribe has not formally assumed the SHPO's responsibilities under section 101(d)(2) the tribe may waive its signature rights at its discretion. This will allow tribes the flexibility of allowing agreements to go forward regarding tribal land, but without condoning the agreement with their signature.

Section 800.2(c)(4). Affected local governments must be given consulting party status if they so request. Under § 800.3(f)(1), Agency Officials are required to invite such local governments to be consulting parties. This subsection provides for that status and also reminds Federal agencies that some local governments may act as the Agency Official when they have assumed section 106 legal responsibilities, such as under certain programs administered by the Department of Housing and Urban Development.

Section 800.2(c)(5). Applicants for Federal assistance or for a Federal permit, license or other approval are entitled to be consulting parties. Under § 800.3(f)(1), Agency Officials are required to invite them to be consulting parties. Also, Federal agencies have the legal responsibility to comply with section 106 of the NHPA. In fulfilling their responsibilities, Federal agencies sometimes choose to rely on applicants for permits, approvals or assistance to begin the 106 process. The intent was to allow applicants to contact SHPOs and other consulting parties, but agencies must be mindful of their government-to-government consultation responsibilities when dealing with Indian tribes. If a Federal agency implements its 106 responsibilities in this way, the Federal agency remains legally responsible for the determinations. Applicants that may assume responsibilities under a Memorandum of Agreement must be consulting parties in the process leading to the agreement.

Section 800.2(c)(6). This section allows for the possibility that other individuals or entities may have a demonstrated special interest in an undertaking and that Federal agencies and SHPO/THPOs should consider the involvement of such individuals or entities as consulting parties. This might include property owners directly affected by the undertaking, non-profit organizations with a direct interest in the issues or affected businesses. Under § 800.3(f)(3), upon written request and in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, an Agency Official may allow certain individuals under § 800.2(c)(6) to become consulting parties.

Section 800.2(d)(1). Public involvement is a critical aspect of the 106 process. This section is intended to set forth a standard that Federal agencies must adhere to as they go through the section 106 process. The type of public involvement will depend upon various factors, including but not limited to, the nature of the undertaking, the potential impact, the historic property, and the likely interest of the public. Confidentiality concerns include those specified in section 304 of the Act and legitimate concerns about proprietary information, business plans and privacy of property owners.

Section 800.2(d)(2). This subsection is intended to set the notice standard. Notice, with sufficient information to allow meaningful comments, must be provided to the public so that the public can express its views during the various stages and decision making points of the process.

Section 800.2(d)(3). It is intended that Federal agencies have flexibility in how they involve the public, including the use of NEPA and other agency planning processes, as long as opportunities for such public involvement are adequate and consistent with subpart A of the regulations.

Subpart B—The section 106 Process

Section 800.3. This new section is intended to encourage Federal agencies to integrate the section 106 process into agency planning at its earliest stages.

Section 800.3(a). The determination of whether or not an undertaking exists is the Agency Official's determination. The Council may render advice on the existence of an undertaking, but ultimately this remains a Federal agency decision.

Section 800.3(a)(1). This section explains that if there is an undertaking, but it is not a type of activity that has the potential to affect a historic property, then the agency is finished with its section 106 obligations. There is no consultation requirement for this decision.

Section 800.3(a)(2). This is a reminder to Federal agencies that adherence to the standard 106 process in Subpart B is inappropriate where the undertaking is governed by a program alternative established pursuant to § 800.14.

Section 800.3(b). This section does not impose a mandatory requirement on Federal agencies. It emphasizes the benefit of coordinating compliance with related statutes so as to enhance

efficiency and avoid duplication of efforts, but the decision is up to the Agency Official. Agencies are encouraged to use the information gathered for these other processes to meet section 106 needs, but the information must meet the standards in these regulations.

Section 800.3(c). This sets forth the responsibility to properly identify the appropriate SHPO or THPO that must be consulted. If the undertaking is on or affects historic properties on tribal lands, then the agency must determine what tribe is involved and whether the tribe has assumed the SHPO's responsibilities for section 106 under section 101(d)(2) of the Act. A list of such tribes is available from the National Park Service.

Section 800.3(c)(1). This section reiterates that the tribe may assume the role of the SHPO on tribal land and tracks the language of the Act in specifying how certain owners of property on tribal lands can request SHPO involvement in a section 106 case in addition to the THPO.

Section 800.3(c)(2). This section is the State counterpart to Federal lead agencies and has the same effect. It allows a group of SHPOs to agree to delegate their authority under these regulations for a specific undertaking to one SHPO.

Section 800.3(c)(3). This section reinforces the notion that the conduct of consultation may vary depending on the agency's planning process, the nature of the undertaking and the nature of its effects.

Section 800.3(c)(4). This section makes it clear that failure of an SHPO/THPO to respond within the time frames set by the regulation permit the agency to assume concurrence with the finding or to consult about the finding or determination with the Council in the SHPO/THPO's absence. It also makes clear that subsequent involvement by the SHPO/THPO is not precluded, but the SHPO/THPO cannot reopen a finding or determination that it failed to respond to earlier.

Section 800.3(d). This section specifies that, on tribal lands, the Agency Official consults with both the Indian tribe and the SHPO when the tribe has not formally assumed the responsibilities of the SHPO under section 101(d)(2) of the Act. It also allows the section 106 process to be completed even when the SHPO has decided not to participate in the process, and for the SHPO and an Indian tribe to develop tailored agreements for SHPO participation in reviewing undertakings on the tribe's lands.

Section 800.3(e). This section requires the Agency Official to decide early how and when to involve the public in the section 106 process. It does not require a formal ''plan,'' although that might be appropriate depending upon the scale of the undertaking and the magnitude of its effects on historic properties.

Section 800.3(f). This is a particularly important section, as it requires the Agency Official at an early stage of the section 106 process to consult with the SHPO/THPO to identify those organizations and individuals that will have the right to be consulting parties under the terms of the regulations. These include local governments, Indian tribes and Native Hawaiian organizations and applicants for Federal assistance or permits, especially those who may assume a responsibility under a Memorandum of Agreement (see § 800.6(c)(2)(ii)). Others may request to be consulting parties, but that decision is up to the Agency Official.

Section 800.3(g). This section makes it clear that an Agency Official can combine individual steps in the section 106 process with the consent of the SHPO/THPO. Doing so must protect the opportunity of the public and consulting partes to participate fully in the section 106 process as envisioned in § 800.2.

Section 800.4(a). This section sets forth the consultative requirements involved in the scoping efforts at the beginning stages of the identification process. The Agency Official must consult with the SHPO/THPO in fulfilling the steps in subsections (1) through (4). This section emphasizes the need to consult with the SHPO/THPO at all steps in the scoping process. It also highlights the need to seek information from Indian tribes and Native Hawaiian organizations with regard to properties to which they attach religious and cultural significance, while being sensitive to confidentiality concerns. Where Federal agencies are engaged in an action that is on or may affect ancestral, aboriginal or ceded lands, Federal agencies must consult with Indian tribes and Native Hawaiian organizations with regard to historic properties of traditional religious and cultural significance on such lands.

Section 800.4(b). This section sets out the steps an Agency Official must follow to identify historic properties. It is close to the section 106 process under the 1986 regulations, with increased flexibility of timing and greater involvement of Indian tribes and Native Hawaiian organizations in accordance with the 1992 amendments to the Act.

Section 800.4(b)(1). This section on level of effort required during the identification processes has been added to allow for flexibility. It sets the standard of a reasonable and good faith effort on behalf of the agency to identify properties and provides that the level of effort in the identification process depends on numerous factors including, among others listed, the nature of the undertaking and its corresponding potential effects on historic properties.

Section 800.4(b)(2). This new section is also intended to provide Federal agencies with flexibility when several alternatives are under consideration and the nature of the undertaking and its potential scope and effect has therefore not yet been completely defined. The section also allows for deferral of final identification and evaluation if provided for in an agreement with the SHPO/THPO or other circumstances. Under this phased alternative, Agency Officials are required to follow up with full identification and evaluation once project alternatives have been refined or access has been gained to previously restricted areas. Any further deferral of final identification would complicate the process and jeopardize an adequate assessment of effects and resolution of adverse effects.

Section 800.4(c). This section sets out the process for determining the National Register eligibility of properties not previously evaluated for historic significance.

Section 800.4(c)(2). This section provides that if an Indian tribe or Native Hawaiian organization disagrees with a determination of eligibility involving a property to which it attaches religious and cultural significance, then the tribe can ask the Council to request that the Agency Official obtain a determination of eligibility. The Council retains the discretion as to whether or not it should make the request of the Agency Official. This section was intended to provide a way to ensure appropriate determinations regarding properties, located off tribal lands, to which tribes attach religious and cultural significance.

Section 800.4(d)(1). This section describes the closure point in the section 106 process where no historic properties are found or no effects on historic properties are found. Consulting parties must be specifically notified of the determination, but members of the public need not receive direct notification; the Federal agency must place its documentation in a public file prior to approving the undertaking, and provide access to the information when requested by the public. Once the consulting parties are notified, the SHPO/THPO has 30 days to object to the determination. The Council may also

object on its own initiative within the time period. Lack of such objection within the 30 day period means that the agency need not take further steps in the Section 106 process.

Section 800.4(d)(2). This section requires that the Federal agency proceed to the adverse effect determination step where it finds that historic properties may be affected or the SHPO/THPO or Council objects to a no historic properties affected finding. The agency must notify all consulting parties.

Section 800.5(a). This section provides for Indian tribe and Native Hawaiian organization consultation where historic properties to which they attach religious and cultural significance are involved. This section also requires the Agency Official to consider the views of consulting parties and the public that have already been provided to the Federal agency.

Section 800.5(a)(1). This section codifies the practice of the Council in considering both direct and indirect effects in making an adverse effect determination. This section allows for consideration of effects on the qualifying characteristics of a historic property that may not have been part of the property's original eligibility evaluation. The last sentence in this section is intended to amplify the indirect effects concept, similar to the NEPA regulations, which calls for consideration of such effects when they are reasonably foreseeable effects.

Section 800.5(a)(2)(ii). The list of examples of adverse effects has been modified by eliminating the exceptions to the adverse effect criteria. However, if a property is restored, rehabilitated, repaired, maintained, stabilized, remediated or otherwise changed in accordance with the Secretary's standards, then it will not be considered an adverse effect.

Section 800.5(a)(2)(iii). This subsection, along with § 800.5(a)(2)(I), would encompass recovery of archeological data as an adverse effect, even if conducted in accordance with the Secretary's standards. This acknowledges the reality that destruction of a site and recovery of its information and artifacts is adverse. It is intended that in eliminating data recovery as an exception to the adverse effect criteria, Federal agencies will be more inclined to pursue other forms of mitigation, including avoidance and preservation in place, to protect archeological sites.

Section 800.5(a)(2)(iv). This section tracks the National Register criteria regarding the relation of alterations to a property's use or setting to the significance of the property.

Section 800.5(a)(2)(v). This section tracks the language of the National Register criteria as it pertains to the property's integrity.

Section 800.5(a)(2)(vi). This section acknowledges that where properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations are involved, neglect and deterioration may be recognized as qualities of those properties and thus may not necessarily constitute an adverse effect.

Section 800.5(a)(2)(vii). If a property is transferred leased or sold out of Federal ownership with proper preservation restrictions, then it will not be considered an adverse effect. Transfer between Federal agencies is not an adverse effect per se; the purpose of the transfer should be evaluated for potential adverse effects, so that they can be considered before the transfer takes place.

Section 800.5(a)(3). This section is intended to allow flexibility in Federal agency decision making processes and to recognize that phasing of adverse effect determinations, like identification and evaluation, is appropriate in certain planning and approval circumstances, such as the development of linear projects where major corridors are first assessed and then specific route alignment decisions are made subsequently.

Section 800.5(b). This section allows SHPO/THPO's the ability to suggest changes in a project or suggest conditions so that adverse effects can be avoided and thus result in a no adverse effect determination. It is also written to emphasize that a finding of no adverse effect is only a proposal when the Agency Official submits it to the SHPO/THPO for review. This provision also acknowledges that the practice of ''conditional No Adverse Effect determinations'' is acceptable.

Section 800.5(c). The Council will not review ''no adverse effect'' determinations on a routine basis. The Council will intervene and review no adverse effect determinations if it deems it appropriate based on the criteria listed in Appendix A or if the SHPO/THPO or another consulting party and the Federal agency disagree on the finding and the agency cannot resolve the disagreement. The SHPO/THPO and any consulting party wishing to disagree to the finding must do so within the 30-day review period. If Indian tribes or Native Hawaiian organizations disagree with the finding, they can request the Council's review directly, but this must be done within the 30 day review period. If a SHPO/THPO fails to respond to an Agency Official finding within the 30 day review period, then the Agency Official can consider that to be SHPO/THPO agreement with the finding. When a finding is submitted to the Council, it will have 15 days for review; if it fails to respond within the 15 days, then the Agency Official may assume Council concurrence with the finding. When it reviews no adverse effect determinations, the Council will limit its review to whether or not the criteria have been correctly applied.

Section 800.5(d). Agencies must retain records of their findings of no adverse effect and make them available to the public. This means that the public should be given access to the information, subject to FOIA and other statutory limits on disclosure such as section 304 of the NHPA, when they so request. Failure of the agency to carry out the undertaking in accordance with the finding requires the Agency Official to reopen the section 106 process and determine whether the altered course of action constitutes an adverse effect. A finding of adverse effect requires further consultation on ways to resolve it.

Section 800.6(a)(1). When adverse effects are found, the consultation must continue among the Federal agency, SHPO/THPO and consulting parties to attempt to resolve them. The Agency Official must notify the Council when adverse effects are found and should invite the Council to participate in the consultation when the circumstances in § 800.6(a)(1)(i)(A)–(C) exist. A consulting party may also request the Council to join the consultation. The Council will decide on its participation within 15 days of receipt of a request, basing its decision on the criteria set forth in Appendix A. Whenever the Council decides to join the consultation, it must notify the Agency Official and the consulting parties. It must also advise the head of the Federal agency of its decision to participate. This is intended to keep the policy level of the Federal agency apprized of those cases that the Council has determined present issues significant enough to warrant its involvement.

Section 800.6(a)(2). This section allows for the entry of new consulting parties if the agency and the SHPO/THPO (and the Council, if participating) agree. If they do not agree, it is desirable for them to seek the Council's opinion on the involvement of the consulting party. Any party, including applicants, licensees or permittees, that may have responsibilities under a Memorandum of Agreement must be invited to participate as consulting parties in reaching the agreement.

Section 800.6(a)(3). This section specifies the Agency Official's

obligation to provide project documentation to all consulting partes at the beginning of the consultation to resolve adverse effects. Particular note should be made of the reference to the confidentiality provisions.

Section 800.6(a)(4). The Federal agency must provide an opportunity for members of the public to express their views on an undertaking. The provision embodies the principles of flexibility, relating the agency effort to various aspects of the undertaking and its effects upon historic properties. The Federal agency must provide them with notice such that the public has enough time and information to meaningfully comment. If all relevant information was provided at earlier stages in the process in such a way that a wide audience was reached, and no new information is available at this stage in the process that would assist in the resolution of adverse effects, then a new public notice may not be warranted. However, this presumes that the public had the opportunity to make its views known on ways to resolve the adverse effects.

Section 800.6(a)(5). Although it is in the interest of the public to have as much information as possible in order to provide meaningful comments, this section acknowledges that information may be withheld in accordance with section 304 of the NHPA.

Section 800.6(b). If the Council is not a part of the consultation, then a copy of the Memorandum of Agreement must be sent to the Council so that the Council can include it in its files to have an understanding of a Federal agency's implementation of section 106. This does not provide the Council an opportunity to reopen the specific case, but may form the basis for other actions or advice related to an agency's overall performance in the section 106 process.

Section 800.6(b)(1). When resolving adverse effects without the Council, the Agency Official consults with the SHPO/THPO and other consulting parties to develop a Memorandum of Agreement. If this is achieved, the agreement is executed between the Agency Official and the SHPO/THPO and filed with required documentation with the Council. This filing is the formal conclusion of the section 106 process and must occur before the undertaking is approved. Standard treatments adopted by the Council may set expedited ways for competing memoranda of agreement in certain circumstances.

Section 800.6(b)(2). When the Council is involved, the consultation proceeds in the same manner, but the agreement of the Agency Official, the SHPO/THPO and the Council is required for a Memorandum of Agreement.

Section 800.6(c). This section details the provisions relating to Memoranda of Agreement. This document evidences an agency's compliance with section 106 and the agency is obligated to follow its terms. Failure to do so requires the Agency Official to reopen the section 106 process and bring it to suitable closure as prescribed in the regulations.

Section 800.6(c)(1). This section sets forth the rights of signatories to an agreement and identifies who is required to sign the agreement under specific circumstances. The term ''signatory'' has a special meaning as described in this section, which is the ability to terminate or agree to amend the Memorandum of Agreement. The term does not include others who sign the agreement as concurring parties.

Section 800.6(c)(2). Certain parties may be invited to be signatories in addition to those specified in § 800.6(c)(1). They include individuals and organizations that should, but do not have to, sign agreements. It is particularly desirable to have parties who assume obligations under the agreement become formal signatories. However, once invited signatories sign MOAs, they have the same rights to terminate or amend the MOA as the other signatories.

Section 800.6(c)(3). Other parties may be invited to concur in agreements. They do not have the rights to amend or terminate an MOA. Their signature simply shows that they are familiar with the terms of the agreement and do not object to it.

Sections 800.6(c)(4)–(9). These sections set forth specific features of a Memorandum of Agreement and the way it can be terminated or amended.

Section 800.7. This section specifies what happens when the consulting parties cannot reach agreement. Usually when consultation is terminated, the Council renders advisory comments to the head of the agency, which must be considered when the final agency decision on the undertaking is made.

Section 800.7(a)(1). This section requires that the head of the agency or an Assistant Secretary or officer with major department-wide or agency-wide responsibilities must request Council comments when the Agency Official terminates consultation. Section 110(l) of the NHPA requires heads of agencies to document their decision when an agreement has not been reached under section 106. If the agency head is responsible for documenting the decision, it is appropriate that the same individual request the Council's comments.

Section 800.7(a)(2). This section allows the Council and the Agency Official to conclude the section 106 process with a Memorandum of Agreement between them if the SHPO terminates consultation.

Section 800.7(a)(3). If a THPO terminates consultation, there can be no agreement with regard to undertakings that are on or affect properties on tribal lands and the Council will issue formal comments. This provision respects the tribe's unique sovereign status with regard to its lands.

Section 800.7(a)(4). This section governs cases where the Council terminates consultation. In that case, the Council has the duty to notify all consulting parties prior to commenting. The role given to the Federal Preservation Officer is intended to fulfill the NHPA's goal of having a central official in each agency to coordinate and facilitate the agency's involvement in the national historic preservation program.

Section 800.7(b). This section allows the Council to provide advisory comments even though it has signed a Memorandum of Agreement. It is intended to give the Council the flexibility to provide comments even where it has agreed to sign an MOA. Such comments might elaborate upon particular matters or provide suggestions to Federal agencies for future undertakings.

Section 800.7(c). This section gives the Council 45 days to provide its comments to the head of the agency for a response by the agency head. When submitting its comments, the Council will also provide the comments to the Federal Preservation Officer, among others, for information purposes.

Section 800.7(c)(4). This section specifies what it means to ''document the agency head's decision'' as required by section 110(l) when the Council issues its comment to the agency head.

Section 800.8. This major section guides how Federal agencies can coordinate the section 106 process with NEPA compliance. It is intended to allow compliance with section 106 to be incorporated into the NEPA documentation process while preserving the legal requirements of each statute.

Section 800.8(a)(1). This section encourages agencies to coordinate NEPA and section 106 compliance early in the planning process. It emphasizes that impacts on historic properties should be considered when an agency makes evaluations of its NEPA obligations, but makes clear that an adverse effect

finding does not automatically trigger preparation of an EIS.

Section 800.8(a)(2). This section encourages consulting parties in the section 106 process to be prepared to consult with the Agency Official early in the NEPA process.

Section 800.8(a)(3). This section encourages agencies to include historic preservation issues in the development of various NEPA assessments and documents. This is essential for effective coordination between the two processes. It is intended to discourage agencies from postponing consideration of historic properties under NEPA until later initiation of the section 106 process.

Section 800.8(b). This section notes that a project, activity or program that falls within a NEPA categorical exclusion may still require section 106 review. An exclusion from NEPA does not necessarily mean that section 106 does not apply.

Section 800.8(c). This section offers Federal agencies an opportunity for major procedural streamlining when NEPA and section 106 both apply to a project. It allows the agency, when specific standards are met, to substitute preparation of an EA or an EIS for the specific steps of the section 106 process set out in these regulations.

Section 800.8(c)(1). This section lists the standards that must be adhered to when developing NEPA documents that are intended to incorporate 106 compliance. They are intended to ensure that the objectives of the section 106 process are being met even though the specific steps of the process are not being followed.

Section 800.8(c)(2). This section provides for Council and consulting party review of the agency's environmental document within NEPA's public comment review time frame. Consulting parties and the Council may object prior to or within this time frame to adequacy of the document.

Section 800.8(c)(3). If there is an objection to the NEPA document, the Council has 30 days to state whether or not it agrees with the objection. If the Council agrees with the objection, the Agency Official must complete the section 106 process through development of a Memorandum of Agreement or obtaining formal Council comment (§ 800.6–7). If it does not, then the Agency Official can complete its review under § 800.8.

Section 800.8(c)(4). This subsection explains how Agency Officials using NEPA coordination must finalize their section 106 compliance for those cases where an adverse effect is found. The Agency must document the proposed mitigation measures. A binding commitment with the proposed measures must be adopted. In the case of a FONSI, the binding commitment must be in the form of an MOA, drafted in accordance with § 800.6(c). Although the regulations do not send Agency Officials back to § 800.6(b) (regarding consultation towards an MOA), Agency Officials are reminded of the standards they must still follow under § 800.8(c)(1), and specifically the mitigation measures' consultation under § 800.8(c)(1)(v). In the case of an EIS, although a Memorandum of Agreement under § 800.6(c) is not required, an appropriate binding commitment must still be adopted. Finally, the subsection also clarifies the Agency Official's obligation to ensure that its approval of the undertaking is conditioned accordingly.

Section 800.8(c)(5). This section requires Federal agencies to supplement their NEPA documents or abide by §§ 800.3 through 800.6 in the event of a change in the proposed undertaking that alters the undertaking's impact on historic properties.

Section 800.9. This section delineates the methods the Council will use to oversee the operation of the section 106 process. The Council draws upon its general advisory powers and specific provisions of the NHPA to conduct these actions.

Section 800.9(a). This section emphasizes the right of the Council to provide advice at any time in the process on matters related to the section 106 process.

Section 800.9(b). A foreclosure means that an agency has gone forward with an undertaking to such an extent that the Council can not provide meaningful comments. A finding of foreclosure by the Council means that the Council has determined that the Federal agency has not fulfilled its section 106 responsibilities with regard to the undertaking. Such a finding does not trigger any specific action, but represents the opinion of the Council as the agency charged by statute with issuing the regulations that implement section 106.

Section 800.9(c). This section reiterates the requirements of section 110(k) of the Act added in 1992. It also provides a process by which the Council will comment if the Federal agency decides that circumstances may justify granting the assistance. If after considering the comments, the Federal agency does decide to grant the assistance, then the Federal agency must comply with section 106 for any historic properties that still may be affected. This does not require duplication of consultation that may have already taken place with the Council in the course of addressing 110(k), but is intended to ensure that the agency has meaningful consultation with the Council as to mitigating adverse effects if the agency decides to proceed with approving the undertaking.

Section 800.9(d). As the Council reduces its involvement in routine cases, it will be focusing its efforts more and more on agency programs and overall compliance with the section 106 process. The NHPA authorizes the Council to obtain information from Federal agencies and make recommendations on improving operation of the section 106 process. If the Council finds that an agency or a SHPO/THPO has not carried out its section 106 responsibilities properly, it may enter the section 106 process on an individual case basis to make improvement. The Council may also review agency operations and performance and make specific recommendations for improvement under section 202(a)(6) of the Act.

Section 800.10. This section provides a process for how Federal agencies must afford the Council a reasonable opportunity to comment on historic landmarks. It is largely unchanged from the process under previous regulations.

Section 800.11. This section sets forth the requirements for documentation at various steps in the section 106 process. It makes documentation requirements clearer and promotes agency use of documentation prepared for other planning requirements.

Section 800.11(a). The section allows for the phasing of documentation requirements when an agency is conducting phased identification and evaluation. The Council can advise on the resolution of disputes over adherence to documentation standards. However, the ultimate responsibility for compiling adequate documentation rests with the agency. During the consideration of any disputes over documentation, the process is not formally suspended. However, agencies should resolve significant disputes before going forward too far in the section 106 process in order to avoid subsequent delays.

Section 800.11(b). This section allows for the use of documents prepared for NEPA or other agency planning processes to fulfill this provision as long as those documents meet the standards in this section.

Section 800.11(c). This section is intended to protect the rights of private property owners with regard to proprietary information, and Indian

tribes and Native Hawaiian organizations with regard to properties to which they attach religious and cultural significance. This section emphasizes that the regulations are subject to any other Federal statutes which protect certain kinds of information from full public disclosure. The role of the Secretary and the process of consultation with the Council are based on the statutory requirements of section 304 of the Act.

Section 800.11(d)–(f). These sections specify the documentation standards for various findings or actions in the section 106 process. They are incrementally more detailed as the historic preservation issues become more substantial or complex. Each is intended to provide basic information so that a third-party reviewer can understand the basis for an agency's finding or proposed decision.

Section 800.12. This section deals with emergency situations and generally follows the approach of previous regulations.

Section 800.12(a). This section encourages Federal agencies to develop procedures describing how the Federal agency will take into account historic properties during certain emergency operations, including imminent threats to life or property. The nature of the consultation required in developing such procedures will vary, depending upon the extent of actions covered by the procedures. The procedures must be approved by the Council if they are to substitute for Subpart B.

Section 800.12(b). If there are no agency procedures for taking historic properties into account during emergencies, then the Federal agency may either follow a previously-developed Programmatic Agreement or notify the Council, SHPO/THPO and, where appropriate, an Indian tribe or Native Hawaiian organization concerned with potentially affected resources. If possible, the Federal agency should provide these parties 7 days to comment.

Section 800.12(c). This section permits a local government that has assumed section 106 responsibilities to use the provisions of § 800.12(a) and (b). However, if the Council or an SHPO/THPO objects, the local government must follow the normal section 106 process.

Section 800.12(d). A Federal agency may use the provisions in § 800.12 only for 30 days after an emergency or disaster has been declared, unless an extension is sought.

Section 800.13. This section deals with resources discovered after section 106 review has been completed.

Section 800.13(a). This section emphasizes the utility of developing Programmatic Agreements to deal with discoveries of historic properties which may occur during implementation of an undertaking. If there is no Programmatic Agreement to deal with discoveries, and the Agency Official determines that other historic properties are likely to be discovered, then a plan for how discoveries will be addressed must be included in a no adverse effect finding or a Memorandum of Agreement.

Section 800.13(b)(1). This section states the procedures that must be followed when construction has not yet occurred or an undertaking has not yet been approved. Because a Federal agency has more flexibility at this stage, adherence to the consultative process as set forth in § 800.6 is appropriate.

Section 800.13(b)(2). This section provides that where an archeological site has been discovered and where the Agency Official, SHPO/THPO and any appropriate Indian tribe or Native Hawaiian organization agree that it is of value solely for the data that it contains, the Agency Official can comply with the Archeological and Historic Preservation Act instead of the procedures in this subpart.

Section 800.13(b)(3). This section sets forth the procedures that must be followed when the undertaking has been approved and construction has commenced. Development of actions to resolve adverse effects and notification to the SHPO/THPO and the Council within 48 hours of the discovery are required. Comments from those parties are encouraged and the agency must report the actions it ended up taking to deal with the discovery.

Section 800.13(c). This section allows an agency to make an expedited field judgment regarding eligibility of properties discovered during construction.

Subpart C—Program Alternatives

Section 800.14. This section lays out a variety of alternative methods for Federal agencies to meet their section 106 obligations. They allow agencies to tailor the section 106 process to their needs.

Section 800.14(a). Alternate procedures are a major streamlining measure that allows tailoring of the section 106 process to Agency programs and decisionmaking processes. The procedures would substitute in whole or in part for the Council's section 106 regulations. As procedures, they would include formal Agency regulations, but would also include departmental or Agency procedures that do not go through the formal rulemaking process. Procedures must be developed in consultation with various parties as set forth in the regulations. The public must have an opportunity to comment on Alternate procedures. If the Council determines that they are consistent with its regulations, the alternate procedures may substitute for the Council's regulations. In reviewing alternate procedures for consistency, the Council will not require detailed adherence to every specific step of the process found under the Council's regulations. The Council, however, will look for procedures that afford historic properties consideration equivalent to that afforded by the Council's regulations and that meet the requirements of section 110(a)(2)(E) of the Act. If an Indian tribe has substituted its procedures for the Council's regulations pursuant to section 101(d)(5) of the NHPA, then the Federal agency must follow the agreement with the Council and the tribe's substitute regulations for undertakings on tribal lands.

Section 800.14(b). This section retains the concept of Programmatic Agreements. The circumstances under which a Programmatic Agreement is appropriate are specified. The section places Programmatic Agreements into two general categories: those covering agency programs and those covering complex or multiple undertakings. The section on Agency programs makes clear that the President of NCSHPO must sign a nationwide agreement when NCSHPO has participated in the consultation. If a Programmatic Agreement concerns a particular region, then the signature of the affected SHPOs/THPOs is required. An individual SHPO/THPO can terminate its participation in a regional Programmatic Agreement, but the agreement will remain in effect for the other states in the region. Only NCSHPO can terminate a nationwide Programmatic Agreement on behalf of the individual SHPOs. Language is included to recognize tribal sovereignty while providing flexibility to Federal agencies and tribes when developing Programmatic Agreements. While it does not prohibit the other parties from executing a Programmatic Agreement, the language does limit the effect of the agreement to non-tribal lands unless the tribe executes it. However, the language also authorizes multiple Indian tribes to designate a representative tribe or tribal organization to participate in consultation and sign a Programmatic Agreement on their behalf. Requirements for public involvement and notice are included. The section on complex or multiple undertakings ties

back to § 800.6 for the process of creating such programmatic agreements.

Section 800.14(c). Exemptions are intended to remove from section 106 compliance those undertakings that have foreseeable effects on historic properties which are likely to be minimal. Section 214 of the NHPA gives the Council the authority to allow for such exemptions. This section sets forth the criteria, drawn from the statute, for exemptions and a process for obtaining (and terminating) an exemption.

Section 800.14(d). Standard treatments provide a streamlined process by which the Council can establish certain acceptable practices for dealing with a category of undertakings, effects, historic properties, or treatment options. A standard treatment may modify the application of the normal section 106 process under certain circumstances or simplify the steps or requirements of the regulations. This section sets forth the process for establishing a standard treatment and terminating it.

Section 800.14(e). Program comments are intended to give the Council the flexibility to issue comments on a Federal program or class of undertakings rather than comment on such undertakings on a case-by-case basis. This section sets forth the process for issuing such comments and withdrawing them. The Federal agency is obligated to consider, but not necessarily follow, the Council's comments. If it does not, the Council may withdraw the comment, in which case the agency continues to comply with section 106 on a case-by-case basis.

Section 800.14(f). The requirement for consultation program alternatives with Indian tribes and Native Hawaiian organizations is provided for in this section. It is an overlay on each of the Federal program alternatives set forth in § 800.14(a)–(e). It provides for government-to-government consultation with Indian tribes.

Section 800.15. Tribal, State and Local Program Alternatives. This section is presently reserved for future use. The Council will proceed with the review of tribal applications for substitution of tribal regulations for the Council's section 106 regulations on tribal lands, pursuant to section 101(d)(5) of the Act, on the basis of informal procedures. With regard to State agreements, the Council will keep in effect any currently valid State agreements until revised procedures for State agreements take effect or until the agreement is otherwise terminated.

Section 800.16. Definitions. This section includes new definitions to respond to identified needs for clarification and to reflect statutory amendments.

The term ''Agency'' is defined for ease of reference. It tracks the statutory definition in the NHPA.

The definition of ''approval of the expenditure of funds'' clarifies the intent of this statutory language as it appears in section 106 of the NHPA. This definition addresses the timing of section 106 compliance. A Federal agency must take into account the effects of its actions and provide the Council a reasonable opportunity to comment before the Agency decides to authorize funds, not just before the release of those funds. The intent of this provision is to emphasize the necessitate for compliance with section 106 early in the decision making process.

The definition of ''area of potential effects'' acknowledges that the determination of the area potential effects often depends on the nature and scale of the undertaking and the associated effects.

The definition of ''comment'' makes it clear that the term refers to the formal comments of the Council members.

The definition of ''consultation'' describes the nature and goals of this critical aspect of the section 106 review process.

The term ''day'' was defined to clarify the running of time periods.

The term ''effect'' is defined because, even though the ''no effect'' step is not in the rule, the concept of an undertaking's effect is still a part of the ''historic properties affected'' determination.

''Foreclosure'' is a term that has always been a part of the section 106 process. The term describes the finding that is made by the Council when an Agency action precludes the Council from its reasonable opportunity to comment on an undertaking.

The term ''head of the Agency'' is defined in light of the 1992 amendments in section 110(l) that require that the head of an Agency document a decision where a Memorandum of Agreement has not been reached for an undertaking.

''Indian tribe'' is defined exactly as in section 301(4) of the NHPA.

''Native Hawaiian organization'' is defined exactly as in section 301(17) of the NHPA.

''Tribal Historic Preservation Officer'' is the tribal official who has formally assumed the SHPO's responsibilities under section 101(d)(2) of the NHPA.

''Tribal lands'' is defined exactly as in section 301(14) of the NHPA.

''Undertaking'' is defined exactly as in section 301(7) of the statute. The Agency Official is responsible, in accordance with § 800.3(a), for making the determination as to whether a proposed Federal action is an undertaking. As appropriate, an agency should examine the nature of its Federal involvement taking into consideration factors such as the degree of Federal agency control or discretion; the type of Federal involvement or link to the action; and whether or not the action could move forward without Federal involvement. An agency should seek the advice of the Council when uncertain about whether or not its action falls within the definition of an undertaking. The 1986 regulatory definition of undertaking included new and continuing projects, activities, or programs and any of their elements not previously considered under section 106. It is intended that the new definition includes such aspects of a project, activity, or program as undertakings.

Appendix A. Criteria for Council Involvement in Reviewing Individual section 106 Cases

This appendix sets forth the criteria that will guide Council decisions to enter certain section 106 cases. As § 800.2(b)(1) states, the Council will document that the criteria have been met and notify the parties to the section 106 process as required. Council involvement in section 106 cases is not automatic once a criterion has been met. The Council retains discretion as to whether or not to enter such a case. Likewise, it is not essential that all criteria be met. The point of the criteria is to ensure that the Council has made a thoughtful decision to enter the section 106 process and to give agencies, SHPOs/THPOs and other section 106 participants a clear understanding of the kind of cases that warrant Council involvement.

V. Impact Analysis

The Regulatory Flexibility Act

The Council certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Although comments on the proposed rule questioned the validity of such certification, the rule in its proposed and final versions imposes mandatory responsibilities on only Federal agencies. As set forth in section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the Council a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the

course of a Federal agency's compliance with section 106 of the NHPA, must be considered and evaluated by that Federal agency.

The Paperwork Reduction Act

The final regulations do not impose reporting or recordkeeping requirements or the collection of information as defined in the Paperwork Reduction Act.

The National Environmental Policy Act

In accordance with 36 CFR part 805, the Council initiated the NEPA compliance process for the Council's regulations implementing section 106 of the NHPA prior to publication of the proposed rule in the **Federal Register** on September 13, 1996. On July 11, 2000, through a notice of availability on the **Federal Register** (65 FR 42850), the Council sought public comment on its Environmental Assessment and preliminary Finding of No Significant Impact. The Council has considered such comments, and has confirmed its finding of no significant impact on the human environment. A notice of availability of the Environmental Assessment and Finding of No Significant Impact has been published in the **Federal Register**.

Executive Orders 12866 and 12875

The Council is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The Council also is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994. The rule does not mandate State, local, or tribal governments to participate in the section 106 process. Instead, State, local, and tribal governments may decline to participate. State Historic Preservation Officers do advise and assist Federal agencies, as appropriate, as part of their duties under section 101(b)(3)(E) of the NHPA, as a condition of their Federal grant assistance. In addition, in accordance with Executive Order 12875, the rule includes several flexible approaches to consideration of historic properties in Federal agency decision making, such as those under § 800.14 of the rule. The rule promotes flexibility and cost effective compliance by providing for alternate procedures, categorical exemptions, standard treatments, program comments, and programmatic agreements.

The Unfunded Mandates Reform Act of 1995

The final rule implementing section 106 of the NHPA does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The Council thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

Executive Order 12898

The final rule implementing section 106 of the NHPA does not cause adverse human health or environmental effects, but, instead, seeks to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by this rule seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The Council considers environmental justice issues in reviewing analysis of alternatives and mitigation options particularly when section 106 compliance is coordinated with NEPA compliance. Guidance and training is being developed to assist public understanding and use of this rule.

Memorandum Concerning Government-to-Government Relations With Native American Tribal Governments

The Council has fully complied with this Memorandum. A Native American/Native Hawaiian representative has served on the Council. As better detailed in the preamble to the rule adopted in 1999, the Council has consulted at length with Tribes in developing the substance of what became the proposed rule in this rulemaking. The rule enhances the opportunity for Native American involvement in the section 106 process and clarifies the obligation of Federal agencies to consult with Native Americans. The rule also enhances the Government-to-Government intentions of the memorandum.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Council will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 11, 2001.

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Intergovernmental relations.

For the reasons discussed in the preamble, the Advisory Council on Historic Preservation amends 36 CFR chapter VIII by revising part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants

Sec.
800.1 Purposes.
800.2 Participants in the Section 106 process.

Subpart B—The Section 106 Process

800.3 Initiation of the section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
800.6 Resolution of adverse effects.
800.7 Failure to resolve adverse effects.
800.8 Coordination with the National Environmental Policy Act.
800.9 Council review of Section 106 compliance.
800.10 Special requirements for protecting National Historic Landmarks.
800.11 Documentation standards.
800.12 Emergency situations.
800.13 Post-review discoveries.

Subpart C—Program Alternatives

800.14 Federal agency program alternatives.
800.15 Tribal, State, and local program alternatives. [Reserved]
800.16 Definitions.
Appendix A to Part 800—Criteria for Council involvement in reviewing individual section 106 cases

Authority: 16 U.S.C. 470s.

Subpart A—Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a

reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must complete the section 106 process ''prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.'' This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer.*

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations.*

(i) *Consultation on tribal lands.*

(A) *Tribal historic preservation officer.* For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions.* When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses, and other approvals.* An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may

also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures.* The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews.* The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data

concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*

(1) *Apply National Register criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the agency official's finding under paragraph (d)(1) of this section, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all

qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to § 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out the undertaking in accordance with § 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.*

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the agency official shall submit the finding, along with the documentation specified in § 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in § 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its determination. The agency official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) *Results of assessment.*

(1) *No adverse effect.* The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation

is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation.* The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*

(1) *Resolution without the Council.*

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement.* A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.*

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others.* The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) *Comments by the Council.*

(1) *Preparation.* The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination With the National Environmental Policy Act.

(a) *General principles.*

(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a ''major Federal action significantly affecting the quality of the human environment,'' and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes.* An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106.* During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's

consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and (v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.*

(i) The agency official shall submit the EA, DEIS, or EIS to the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS, or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS, or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall notify the agency official either that it agrees with the objection, in which case the agency official shall enter into consultation in accordance with § 800.6(b)(2) or seek Council comments in accordance with § 800.7(a), or that it disagrees with the objection, in which case the agency official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) *Approval of the undertaking.* If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in:

(A) The ROD, if such measures were proposed in a DEIS or EIS; or

(B) An MOA drafted in compliance with § 800.6(c); or

(ii) The Council has commented under § 800.7 and received the agency's response to such comments.

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of section 106 compliance.

(a) *Assessment of agency official compliance for individual undertakings.* The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*

(1) *Agency responsibility.* Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) *Consultation with the Council.* When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants.* Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation.* The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format.* The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality.*

(1) *Authority to withhold information.* Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of agreement.* When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement. Documentation shall include:*

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures.* The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) *Using a programmatic agreement.* An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National

Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

§ 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the **Federal Register** and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the **Federal Register**.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.*

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings.* Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the

provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements.* The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories.*

(1) *Criteria for establishing.* An agency official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as ''undertakings'' as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The agency official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The agency official shall publish notice of any approved exemption in the **Federal Register**.

(d) *Standard treatments.*

(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the **Federal Register**.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

(e) *Program comments.* An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the **Federal**

Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and local program alternatives. [Reserved]

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's ''Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act'' provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and

conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual section 106 Cases

(a) *Introduction.* This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy.* The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria.* The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: December 4th, 2000.

John M. Fowler,

Executive Director.

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Part III

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 308

State Self-Assessment Review and Report; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 308

RIN 0970–AB96

State Self-Assessment Review and Report

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement a provision of the Social Security Act added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which requires each State to annually assess the performance of its child support enforcement program and to provide a report of the findings to the Secretary of the Department of Health and Human Services (DHHS).

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Jan Rothstein, OCSE Division of Policy and Planning, (202) 401–5073. Hearing impaired individuals may call the Federal Dual Party Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These regulations are published under the authority of the Social Security Act (the Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). Section 454(15)(A) of the Act (42 U.S.C. 654(15)(A)) contains a requirement for each State to annually assess the performance of the State's child support enforcement program under title IV–D of the Act in accordance with standards specified by the Secretary, and to provide a report of the findings to the Secretary.

These regulations are also published under the general authority of section 1102 of the Act (42 U.S.C. 1302) authorizing the Secretary to publish regulations necessary for the efficient administration of the title IV–D program.

Background

Prior to PRWORA, Federal law specified that States that had been audited and found not to be in substantial compliance with Federal requirements were subject to a financial penalty of between 1 and 5 percent of the State's funding under the title IV–A program. These audits were performed every 3 years. The penalty could be held in abeyance for up to one year to allow States the opportunity to implement corrective actions to remedy the program deficiency. At the end of the corrective action period, a follow-up audit was conducted. If the follow-up audit showed that the deficiency had been corrected, the penalty was rescinded. Section 342(b) of PRWORA revised section 452(a)(4) of the Act, changing Federal audit requirements to focus on data reliability and to assess performance outcomes instead of determining compliance with process steps.

At the same time, section 342(a) of PRWORA amended the Act by adding a new section 454(15)(A) of the Act to require each State to conduct an annual review of its Child Support Enforcement (IV–D) program to determine if Federal requirements are being met and to provide an annual report to the Secretary of DHHS on the findings. The changes to sections 452 and 454(a)(15) of the Act mean that the Federal government's audit responsibilities now focus primarily on results and fiscal accountability while States are to focus on the responsibilities for child support service delivery in accordance with Federal mandates. The annual self-assessment's purpose is to give a State the opportunity to assess whether it is meeting Federal requirements for providing child support services and providing the best services possible. There are no financial sanctions associated with a State's self-assessment. It is to be used as a management tool, to help a State evaluate its program and assess its performance.

Following the enactment of PRWORA and to ensure broad input, OCSE consulted with a wide variety of program stakeholders to get recommendations on how to proceed. These recommendations addressed: the criteria to be covered in annual reports to the Secretary; the methodology for reviewing the criteria; and an approach for reporting the results of these reviews. OCSE considered these recommendations in developing the proposed rule.

Prior to writing the proposed rule, OCSE received suggestions on self-assessment reviews at national and regional meetings, including meetings with the American Public Human Services Association, formerly known as the American Public Welfare Association (APWA) and the National Child Support Enforcement Association (NCSEA). In addition, several child support advocacy groups informally provided comments. Comments were also solicited from State IV–D directors.

Federal Role

The Federal role in the self-assessment review process includes receiving reports submitted pursuant to section 452(a)(4)(B) of the Act and, as appropriate, provide to the States comments, recommendations for additional or alternative corrective action, and any technical assistance that a State may need. The Federal involvement includes, but is not limited to: approving IV–D State plan amendments certifying that the State has a self-assessment review process; providing review requirements, guidelines, instructions and methodologies for the review to the State; responding to requests for help from the State; providing interpretation of compliance standards; developing continuing partnerships; reviewing and providing appropriate comments on self-assessment reports; developing a self-assessment review module; overseeing the implementation of the self-assessment process in the States; periodically analyzing self-assessment reports to identify ''best practices'' to be shared with other States and providing comments and recommendations regarding the appropriateness of proposed corrective action or alternative correction action.

Description of Regulatory Provisions

These regulations implement the statutory requirement that a State annually assess the performance of its IV–D program and submit a report of the findings to the Secretary by adding a new part 308, ''Annual State Self-Assessment Review and Report'' to existing rules in Chapter III governing the child support enforcement program under title IV–D of the Act.

Section 308.0 sets the scope of the regulation and specifies this is applicable only to the annual State self-assessment review and report process.

Section 308.1 provides the components of the self-assessment implementation methodology that States must use including: sampling, scope of review, the review period, and reporting.

Section 308.1(a) addresses the obligation of the IV–D agency to maintain the responsibility and control for all reviews, review findings and the content of the annual report. We have revised the regulatory language in this section since publication of the proposed rule to delete requirements on organizational placement and to clarify responsibilities in response to comments received that the requirement

could be read as IV–D responsibility for control of reviews only when the self-assessment is privatized.

Section 308.1(b) specifies that a State must either review all of its cases or conduct sampling which meets the criteria specified. Due to the differences in administrative structures in States, we did not prescribe a single sampling formula for universal use by all States. Instead, under paragraph (b), a State has discretion in designing its own sampling methodologies that could be tailored to meet individual State needs. However, under paragraphs (b)(2) and (3), each State must maintain a minimum confidence level of 90 percent for each criterion, select statistically valid samples, and assure that there are no portions of the IV–D case universe omitted from the sample selection process.

The following checklist has been developed to provide guidance in the form of a series of steps that should be taken during the development and application of a sampling methodology. This checklist is not intended as a definitive pronouncement or mandate from OCSE, but only as a guide outlining a generic sampling approach. We provide it for reference and guidance only.

1. Define the reason(s) for collecting and evaluating the data: i.e. each State must evaluate its performance with regard to each required program compliance criterion set forth in section 308.2.

2. Plan the data collection method(s):

a. Identify the criteria to be evaluated (refer to section 308.2).

b. Select a method of data collection/evaluation.

c. Establish a minimally acceptable level of performance.

d. Set a desired confidence level pursuant to Federal requirements.

e. Choose a method of random selection (e.g., simple random selection or systematic random selection).

3. Collect the required data: After selecting the sample cases, obtain the case files and/or the pertinent computer records containing the necessary data elements.

4. Process the collected data: Evaluate each case for each criterion to determine if an action was required, and if the required action was taken. Tabulate the results of the sample or samples.

5. Analyze the data. Quantify results and statistically evaluate the results obtained.

6. Present the results for each criterion in a tabular format and provide a narrative explanation of the results obtained.

Section 308.1(c) relates to the scope of the self-assessment review. This paragraph requires a State to review all required criteria articulated in section 308.2 on a yearly basis.

Section 308.1(d) provides for a 12-month review period, beginning no later than 12 months after the effective date of this final rule and occurring again each 12 month period thereafter. We revised this section in response to comments to clarify when the review period begins and ends. The 12-month review period is consistent with prior audit review periods and allows enough time to evaluate the case processing timeframes in part 303. States should continue to use the same review periods they used prior to publication of this final rule and should make no break in their reviewing processes. States need not match each other's review periods, provided that case samples selected are from the period that will be reviewed and reflected in their report. Self-assessment reviews can be conducted in one of two ways: historically or incrementally. Using the historical approach, a State begins its self-assessment review after the end of the period to be reviewed. We have made changes to the language in this section to explain and clarify what the duration of the review period is.

Using the incremental approach, a State selects cases from several periods during the review period and adds the results to provide a picture of performance for the entire period. The State would draw a separate sample for each incremental review period. The incremental approach enables the State to spread its review effort over time and make more efficient use of available resources because the sample size could be smaller, while allowing the State to identify problem areas and take corrective action prior to the end of the review period. For those States who review their case samples incrementally, the cases selected must be reviewed and evaluated for the actions required at the beginning of the incremental review period.

Section 308.1(e) addresses the contents of the annual reports and requires copies to be sent to the Commissioner, OCSE and the applicable Regional Office. The State must submit its written report no later than 6 months after the end of the review period. For example, if the review period ends September 30, 2000, the report would be due by March 31, 2001. We revised this section to clarify that States should submit a description of any corrective actions proposed and/or taken.

Section 308.2 lists and provides descriptions of the required program compliance criteria. In all cases, States must have the required procedures specified in the regulations. In this section we are requiring States to use benchmarks for performance that are identical to those that were required when previous Federal audit standards were in place. The benchmarks for determining the adequacy of performance continue to be appropriate under the new system of self-assessment reviews because States are being asked to measure themselves on the same performance criteria as under previous audit standards. States should use the benchmarks to determine when corrective action is necessary, i.e. if they fail to meet one or more benchmarks. Reviews of closed cases would need to demonstrate that appropriate action was taken in 90 percent of the cases reviewed. Further, reviews of the other required program criteria would need to show that appropriate action was taken in 75 percent of the cases reviewed.

Section 308.2(a) requires reviews of closed IV–D cases to determine whether the case met one or more Federal case closure criteria under section 303.11.

Section 308.2(b)(1) requires the review of State actions to establish paternity and support orders. A case would meet the review requirement if an order for support was required and established during the review period, notwithstanding the relevant timeframes. Section 308.2(b)(2) addresses the necessary procedures to follow when an order was required but not established during the review period.

Section 308.2(c) requires the review of State actions to enforce child support orders. If income withholding was appropriate, a case would meet the review requirement if it was received during the review period, notwithstanding the mandatory timeframes. A review of the enforcement of orders would include all cases in which an ongoing income withholding is in place, as well as those cases in which new or repeated enforcement actions were required during the review period. We made changes to this section to correct a typing mistake that appeared in the proposed rule, to clarify the locate sources that are appropriate to use, and to specify the timeframes for sending a notice to the employer to withhold income if information is obtained from the State Directory of New Hires or other recognized sources.

Section 308.2(d) describes reviews of the disbursement of collections. This review would include a determination of whether States are complying with the 2-day requirement for disbursing

certain collections. States that fail to meet the 2-day time frame but are under an alternative penalty for failure to meet the State disbursement unit (SDU) deadline should mention that fact in their self-assessment reports. Section 308.2(d) requires States to determine whether disbursements of collections were made in compliance with the Act. We made changes to this section based on a comment we received regarding review of payments received. The regulatory language now indicates that States must review the last payment received for each case. We also deleted language in this section to clarify the requirement.

Section 308.2(e) requires reviews of securing and enforcing medical support orders. This includes measuring whether the requirements were met for: including a medical support provision in all new orders; taking steps to determine whether reasonable health insurance is available when health insurance is included in the order; informing the Medicaid agency when coverage was obtained; determining whether the custodial parent was informed of policy information when coverage has been obtained; determining whether employers are informing the State of lapses in coverage; and determining whether the State transferred notice of the health care provision to a new employer when a noncustodial parent changed employment.

Section 308.2(f) addresses the review and adjustment of orders. A case meets the review requirement if it was reviewed and met the conditions for adjustment notwithstanding the applicable timeframes. An examination of the review and adjustment criterion includes reviews of assistance cases, review of cases where adjustments were not necessary, repeated location efforts, notices to the custodial and non-custodial parents informing them of their rights to request reviews within 180 days of determining that a review should be conducted, and reviews of whether both parties were given 30 days to contest adjustments if the cost-of-living or automated methods had been utilized. We have made minor revisions to the regulatory language in this section to clarify the actions required.

Section 308.2(g) addresses interstate services. The review criterion includes the initiating State's responsibility to refer cases to the responding State within 20 days of determining that the noncustodial parent is in another State pursuant to section 303.7(b)(2); providing responses to the responding State with requested additional information within 30 calendar days of the request pursuant to section 303.7(b)(4); notifying the responding State of new information within 10 working days pursuant to section 303.7(b)(5); and sending a request for review of a child support order within 20 calendar days after receiving a request for review and adjustment under the Uniform Interstate Family Support Act (UIFSA) pursuant to section 303.7(b)(6). In recognition of the fact that passage of UIFSA and other PRWORA administrative enforcement actions have changed the way interstate cases are processed, we encourage States to use one-state action to take any enforcement action they can on a case, rather than referring all cases for two-state action. We have revised the final rule to provide for the referral of interstate cases where appropriate.

Reviews must also include determining compliance with responsibilities of the responding State in interstate cases, including central registry requirements for review of submitted documentation for completeness, forwarding the case to the State Parent Locator Service for locate services, acknowledgment of the receipt of the case and requests for missing documentation from the initiating State, and whether the IV–D agency in the initiating State was informed of where the case was sent for action. The review would also determine whether the central registry responded to inquiries from other States within five working days of receipt of a request for a case status review pursuant to section 303.7(a)(4).

Section 308.2(b), (c), and (f) contain language that previously appeared in the former Federal audit regulations at section 305.20 relative to certain missed timeframes. As we stated in the preamble to the final Federal audit regulations in 1994 (59 FR 66204), the State should not be penalized when timeframes are missed in a case if a successful result is achieved (paternity or a support order is established, an order is adjusted, income is withheld, or a collection is made or distributed), since these results are the main goals of the child support enforcement program. We emphasize that all timeframes, including those for paternity establishment, support order establishment, review and adjustment, and income withholding, are still Federal requirements that States must meet.

Other timeframes that must be reviewed for compliance include: 10 days to forward the case upon locating the non-custodial parent in a different jurisdiction pursuant to section 303.7(c)(5) and (6); two business days to forward any support payments collected to the initiating State pursuant to section 303.7(c)(7)(iv); and 10 working days to notify the initiating State upon receipt of new information pursuant to section 303.7(c)(9).

Section 308.2(h) addresses the timeframes applicable to the expedited processes criterion pursuant to section 303.101(b)(2)(i) and in keeping with previous definitions of substantial compliance in former section 305.20, we are proposing a benchmark of 75 percent for the number of cases to be completed within 6 months and a benchmark of 90 percent for the number of cases to be completed within one year. The 75 and 90 percent benchmark standards apply to the establishment of orders from the date of service of process to the time of disposition.

Section 308.3 lists and describes the optional program areas of review, which include program direction and program service enhancements. Section 308.3(a) pertains to the review of State program direction.

The first optional category, Program Direction, should be an analysis of the relationships between case results relating to program compliance areas, and performance and program outcome indicators. While this review category is optional, by including the information, States have the opportunity to demonstrate how they are trying to manage their resources to achieve the best performance possible. This evaluation should explain the data and how the State adjusted its resources and processes to meet goals and improve performance. In this section, States are encouraged to discuss new laws and enforcement techniques, etc., that are contributing to increased performance. Barriers to success, such as State statutes, may also be discussed in this section.

Section 308.3(b) pertaining to the optional review of State program service enhancements is envisioned as a report of practices initiated by the State that are contributing to improving program performance and customer service.

Examples include improvement of client services through the use of expanded office hours, kiosks, internet, and voice response systems. This is an opportunity for a State to promote its programs and innovative practices. Some examples of innovative activities that a State may elect to discuss in the report include: steps taken to make the program more efficient and effective; efforts to improve client services; demonstration projects testing creative new ways of doing business; collaborative efforts being taken with partners and customers; innovative

practices which have resulted in improved program performance; actions taken to improve public image; and access/visitation projects initiated to improve non-custodial parents' involvement with the children. A State also could discuss in this review area whether the State has a process for timely dissemination of applications for IV–D services in cases that are not receiving public assistance, when requested, and child support program information to recipients referred to the IV–D program, as required by section 303.2(a).

Response to Comments

On October 8, 1999 we published a Notice of Proposed Rulemaking in the **Federal Register** with a 60 day comment period (64 FR 55102). We received 73 comments from 19 State and local IV–D agencies, national child support enforcement organizations, advocacy groups representing custodial parents and children, and the general public. Two commenters wrote solely to express their support for the notice of proposed rulemaking. A summary of the comments received and our responses follow.

General Comments

Comment: One commenter was concerned that States that modify the review standards by imposing a higher standard on themselves than required by the final rule would make themselves more susceptible to a Federal audit over substantial compliance issues.

Response: We welcome the idea that States will want to hold themselves to higher standards then those set by this final rule. Certainly, performance on the program compliance criteria that exceeds the standards would represent greater benefits for children and families. States should be assured that setting higher standards for themselves will not mean greater attention from OCSE or increase the likelihood of Federal audits. The Incentive Payments and Audit Penalties NPRM (64 FR 55074, October 8, 1999) proposed that OCSE would conduct audits for such purposes as OCSE may find necessary. This could include circumstances under which the results of two or more State self-assessments show evidence of sustained poor performance or indicate that the State has not corrected deficiencies identified in previous self-assessments. However, we would certainly not be more likely to audit a State because it failed to meet a self-imposed higher performance standard.

Comment: One commenter was concerned because the NPRM does not address penalties for a State's failure to produce an adequate self-assessment. They thought a Federal compliance audit should be triggered by a State's failure to audit its own compliance adequately.

Response: The statute requires States, as a condition of State plan approval, to provide for a process for annual reviews of and reports to the Secretary on the State IV–D program. Therefore, a State's failure to provide for the process in its State plan or to conduct such a review and submit the findings to the Secretary in accordance with Federal requirements would result in steps to initiate State plan disapproval and loss of all Federal IV–D funding.

Comment: Another commenter was concerned that the integrity of the self-assessment process would be threatened by the possibility of a Federal audit for accurately assessing a weak area.

Response: We expect States to use the self-assessment as a management tool and to be entirely accurate and objective when reporting their performance. To do otherwise would only harm the State and its future performance. PRWORA revised Federal audit requirements from a process-based system to a performance-based system. This means balancing the Federal government's oversight responsibilities with States' responsibilities for child support service delivery and fiscal accountability. However, we want to point out that the Secretary retains the right to conduct substantive compliance audits, but would likely assert that right only in the most egregious circumstances such as where the State fails to take steps to correct sustained poor performance.

Comment: Four commenters addressed what they think is an inconsistency between the incentive and penalty NPRM and this NPRM. They think this NPRM states that the self-assessment review is not tied to fiscal sanctions while section 305.60(c)(2)(i) of the incentive and penalty NPRM says self-reviews can lead to audits which may lead to penalties. These commenters think the final rule on self-assessments should state clearly that States would not be subject to a fiscal penalty as a result of self-assessment reviews.

Response: We want to be very clear on this point: States will not incur a fiscal penalty as a direct result of poor performance reported in a self-assessment review. We want to encourage States to report accurately and fully their actual performance in the self-assessment reviews. Self-assessment reviews are management tools for States to assess and improve their performance. However, section 452(a)(4)(C) of the Act established that the Secretary may conduct audits for such purposes as she may find necessary, including audits to determine substantial compliance. Financial penalties are potential consequences of these separate, Federal audits. Audits to determine substantial compliance could be triggered by: evidence of systemic problems with a State's child support program, on-going performance issues that are not addressed or corrected in more than one State self-assessment, and similar problems.

Self-Assessment Implementation Methodology—Section 308.1

Comment: One commenter thought the effective date of the NPRM was unclear. The commenter also thought the review date was unclear and wondered, if a State chooses to conduct a review with an incremental approach, how would the end of the review period be determined?

Response: This regulation is effective upon publication. Each self-assessment review period covers a 12-month period. For clarification, we revised the language in section 308.1(d). The regulatory standards would be applied beginning with the start of the first new review period occurring after publication. It is expected that States will continue to use the same review periods that they have been using for the past two years and that there will be no gaps. All subsequent self-assessment review periods would then immediately follow the time period of the previous review period. The report documenting and presenting the results of the review are due to OCSE no later than 6 months after the end of the review period. As stated previously, States may choose to use historical or incremental approaches to their self-assessment reviews. States have discretion in choosing the duration of their increments. If, for example, a State chooses a quarterly increment, it could start on October 1 and would then end December 31. Each subsequent quarterly incremental review period would then end 3-months later.

Comment: Several commenters suggest allowing States to apply for extensions of the self-assessment reporting deadline in recognition that States with more complicated review processes will need more time.

Response: We do not think extensions will be necessary. States are currently conducting reviews that are very similar in scope and content to the reviews required by this regulation and by and large, States are conducting the reviews with little or no problems. OCSE is available to assist States should they encounter any problems.

Comment: We received 10 comments on the requirement that the sampling

methodology for self-assessments must maintain a minimum confidence level of 90 percent for each criterion. Most commenters suggested using an overall confidence level of 90 percent for all criteria. Another commenter was concerned that their statewide system would be unable to pull cases by criterion and so would be unable to achieve a minimum confidence level of 90 percent for each criterion.

Response: For a self-assessment review to be a useful tool for management, it must provide accurate, and reliable information. Information provided should identify program strengths and weaknesses as well as provide meaningful estimates of current performance.

As we understand it, States that have raised the 90 percent confidence level issue are advocating the use of one sample selected from the IV–D caseload to review all eight required performance criteria. This approach would likely result in adequate representation for some of the reviewed criteria and inadequate representation for other reviewed criteria. This would occur because the action that needs to be reviewed for one or more of the criteria may occur infrequently in the population, while the action needed to be reviewed for other criteria may occur more frequently. Consequently, the likelihood that the sample will contain cases having the attribute being sought could potentially be quite low. As a result, small samples are selected, and the effect of detected errors on the sample estimate are magnified because the computed standard error associated with the estimate derived from the sample (point estimate or efficiency rate) will more than likely be large. This could result in relatively poor performance being accepted as possibly being in compliance with Federal requirements. It also appears that these States are suggesting that they then be allowed to combine the results for all eight criteria and compute an overall compliance rate and determine the confidence level attributable to that rate. This action would emphasize the performance of the criteria with the most representation, and mitigate or de-emphasize the performance of those criteria with minimal representation. This would not facilitate results that would be useful to States as a management tool to accurately assess their performance.

We used 90 percent confidence as the value for the confidence level variable in the sample size computation to reduce the sample sizes States would need to conduct their self-assessment reviews. Under previous audits, the OCSE Auditors used a 95 percent confidence level. In order to determine sample size for self-assessment purposes, one must consider: confidence level (the degree of confidence to place in the derived estimate), sampling error (the degree of error that can be accepted), and expected rate of occurrence of the attribute to be sampled. Varying these three factors influences the size of sample required. Varying the precision and desired confidence level can dramatically affect the sample size determination and overall benefit/impact of the effort. Sampling error has the largest effect on sample size. In other words, as the acceptable error percentage increases the sample size decreases. The converse is true in the case of a confidence level. An increase in the sampling error percentage from 5 percent to 10 percent, coupled with a decrease in the confidence level (i.e., from 95 percent to 90 percent) required, would significantly reduce the sample size required. The problem often encountered when the sample size has been reduced by changing both the confidence level and sampling error in opposite directions is a sample that produces a large standard error associated with the estimate derived. This can result in fairly poor performance being seen as compliance. For all of these reasons, we think it would be imprudent to take the commenters suggestion and we have retained the original confidence levels in the final rule.

In response to the commenter concerned about his statewide system's inability to meet the requirements, OCSE will provide any State the technical assistance it needs to meet these requirements. Statewide systems should be able to meet these requirements and need to be able to for Federal reporting requirements.

Comment: One commenter recommended the reference to a formal self-assessment ''unit'' be amended to permit the States flexibility to assign staff rather than create a formal unit. The commenter thinks PRWORA requires a process for self-assessment but not a unit. The commenter thinks this recommendation is consistent with the workgroup's recommendation.

Response: The commenter's point is well taken. PRWORA simply requires that a process be put in place. Although it would be preferable that a formal self-assessment unit be established, it is not required. However, we encourage States to establish a formal unit because of the following benefits: (1) Continuity—the possibility that the same staff would be conducting the annual reviews over the course of several years, and (2) Familiarity—the possibility that the staff will have experience with the Child Support Program and the review instrument used. We have deleted the provisions on organizational placement from the final rule. We have specified only that the IV–D agency must ensure that requirements are met and maintain responsibility for the review and report. States have the flexibility to establish a self-assessment unit within the IV–D agency, another State agency, or within the umbrella agency containing the IV–D agency or privatize the self-assessment.

Comment: Two commenters requested that we add language that appears to be missing from 308.1(a)(1) that appears in (a)(2) regarding a State's ability to privatize self-assessment functions as long as the IV–D agency maintains responsibility for and control of the results produced and the contents of the annual report.

Response: As discussed in the preceding comment, we have revised this section to increase clarity and removed the specific organizational requirements.

Comment: One commenter thought there was an inconsistency between the language in the preamble relating to organizational placement for the self-assessment unit and the requirements specified in section 308.1(a). The commenter was concerned that section 308.1(a) could be read to mean that the IV–D agency only had sole responsibility for the self-assessment when the self-assessment is privatized.

Response: We do not believe there was an inconsistency. The preamble state that it would be ideal if the organizational placement was within the IV–D agency because this would enable the IV–D agency to draw on the experience of IV–D staff who have the skills and qualifications needed to analyze the program. However, we recognized in the preamble that this is not always possible. We revised section 308.1(a) to read as follows: ''The agency must ensure the review meets Federal requirements and must maintain responsibility for and control of the results produced and contents of the annual report.''

Comment: One commenter suggested that the final rule should not stipulate a report format. It should only state that the report must contain the review methodology, the compliance findings and corrective action plan, if needed.

Response: We are stipulating a general report format. Section 308.1(e)(2) states that the report must include but is not limited to an executive summary; a description of optional program criteria

covered by the review; a description of sampling methodology used, if applicable; the results of the review; and description of any corrective action proposed and/or taken. We have specified this format because we need to be sure that we receive comparable information from all States. States are free to use any report format they choose that includes the required information. We want to be clear that we are not requiring a specific corrective action plan format. States must describe how they will change their programs to better achieve the goals of the child support program and meet the self-assessment benchmarks. We revised section 308.1(e)(iv) to indicate that the State must include a description of any corrective action proposed and/or taken.

Comment: One commenter suggested allowing States to submit a subsequent report 3 to 6 months following the initial report instead of including any corrective actions proposed and/or taken in the initial report.

Response: We believe 3 to 6 months is too short a period of time to expect to have significant results from corrective actions. The purpose of requiring States to report on corrective actions in their self-assessment reports is to ensure that States have explicit plans in place to address performance problems to ensure they do not continue to occur in subsequent years.

Comment: One commenter was concerned that the schedule of reporting would be an undue burden on States, causing them to evaluate and report on a different schedule than all other Federal reporting. The commenter was also concerned that requiring the review to begin immediately when the rule becomes effective does not allow States the ability to review any new rule changes and develop procedures, train staff, and implement reviews based on the new standards.

Response: We believe the regulation gives States flexibility in determining when to start their review periods. We revised section 308.1(d) to make it clear that each review period must cover a 12-month period, the first of which must begin no more than 12 months after the effective date of this final rule. The review requirements in this rule are consistent with the review components spelled out in program instructions issued two years ago in OCSE–AT–98–12.

Comment: Two commenters urged that the regulations require States to use comparable review periods and methodologies over time. The commenter thought that the assessments would lose their value as a way to analyze changes in performance over time if the framework shifts from year to year.

Response: We do not think it is necessary to place this restriction on States. We expect that States will make every effort to standardize the process using their statewide systems and that the annual self-assessments will be comparable to as great an extent as possible. Again, we wish to stress our overarching concern that these reviews be useful to States as management tools to assess their own performance.

Comment: Two commenters suggested additional steps be taken to ensure self-assessments are meaningful and useful. They thought the Secretary should ensure the reports are available to the public and other interested parties. In addition, they thought that the required elements should be described in detail including specific findings for each criteria. The commenters also thought the relationship between self-assessment and corrective action is not clear and that the final regulations should require corrective action plans if a self-assessment reveals substantial noncompliance.

Response: We believe that by following the directives in the final rule, States will design self-assessment reviews that serve them meaningfully as management tools to review their progress in serving families and children. States are free to make these reviews available to the public and they would be available through the Freedom of Information Act process if necessary. We do not agree that further detail is needed to describe the required elements of the self-assessment. States are required to include in their self-assessment reports a description of any corrective actions proposed and/or taken. This description is to be part of the management tool, designed to help the State achieve the benchmarks and improve its performance in the future. We believe States will propose corrective actions when needed.

Comment: One commenter noted that the NPRM requires that the self-assessment report contain ''any corrective actions proposed and/or taken.'' Based on the description of the Federal role in the self-assessment process, it appeared to the commenter that the corrective action plans are subject to Federal acceptance. Yet, the commenter noted, the proposed rule contains no detail about what a corrective action plan should contain. The commenter requested more clarification about corrective action plans.

Response: States are not required to request or receive Federal approval of any corrective action proposed or taken. Again, we want to be clear that we are not requiring a specific corrective action plan. As stated earlier, a State must describe how it will change its programs to better achieve the goals of the program and the benchmarks of the self-assessment. The action described should be clearly aimed at solving all the problems identified in the review. Since the main purpose of these reviews is to assist States in evaluating their own performance against a list of eight program criteria, we think the States are in the best position to determine what corrective action is needed to address program deficiencies. We are available to provide any needed technical assistance in this area.

Comment: One commenter thought it was not clear that the State must provide a corrective action plan to describe any corrective action proposed or taken as part of its self-assessment review if a self-assessment indicates serious program deficiencies. The commenter recommended changing the word ''any'' to ''the'' in section 308.1(e)(2)(v).

Response: We have made the suggested change.

Comment: One commenter thought the proposed regulation was unclear on what action OCSE will take if a State fails to file a corrective action plan as mentioned in section 308.1(e)(2)(v) or files one which does not meet the criteria established in the final rules. The commenter recommended adding a subsection (f) to section 308.1 indicating what OCSE will do if no report or an inadequate report is filed. The recommendation was that this subsection should make it clear that failure to submit a report or submission of an inadequate report would trigger the process for State plan disapproval.

Response: Section 454(15) of the Act requires States to have a process for annual reviews of and reports to the Secretary on the State IV–D program. Therefore, failure to have such a process would trigger the State plan disapproval process. However, that was not the intent of the reference to corrective action in section 308.1(e). The principal purpose of the self-assessment process is to serve as a management tool for the IV–D program. We wish States to use the process to determine, what, if any, deficiencies exist in their IV–D program so that these deficiencies can be addressed and corrected. If a State fails to submit a self-assessment report, OCSE would work with that State to try to resolve any issues that might be preventing the State from submitting a self-assessment report. However, if a State fails to make a good faith effort to

resolve any barriers and submit a self-assessment report, we would begin taking the steps necessary to disapprove the State plan pursuant to sections 452(a)(3) and 455(a) of the Act and sections 301.10 and 301.13 of this chapter.

Comment: One commenter noted that OCSE–AT–98–12 contained the suggestion that States submit a copy of their report to the OCSE Area Audit Office. They wondered if a copy of the self-assessment annual report should be sent to the OCSE Area Audit Office.

Response: Section 308.1(e) requires States to provide a report of the results of the self-assessment review to the appropriate OCSE Regional Office and to the Commissioner of OCSE. OCSE will share the self-assessment results with all interested parties within the Administration for Children and Families. If a State is concerned about a particular Area Audit Office receiving a copy of the review, it is free to send one to that office.

Required Program Compliance Criteria—Section 308.2

Comment: One commenter believes section 308.2(g) on interstate services should be revised to recognize the encouragement of direct enforcement across State lines that exists under the Uniform Interstate Family Support Act (UIFSA). Another commenter was concerned that section 308.2(g)(1)(i) fails to recognize long arm jurisdiction for instances other than paternity establishment as provided for under UIFSA. A third commenter thought that for purposes of self-assessment, cases should not be defined as interstate until the local IV–D agency has determined the assistance of another State must be engaged in the enforcement of the case.

Response: We recognize that the regulations on the processing of interstate cases do not take into account the direct enforcement activities that are authorized under UIFSA and PRWORA. OCSE has a workgroup made up of Federal and State staff and child support experts, called the Interstate Reform Initiative, which is working to make suggestions to revise the way interstate cases are processed and working to develop a consensus from which new interstate regulations can be written. We expect to be revising the interstate regulations in the next few years. At that time we will ensure full consistency between State self-assessments and interstate regulations. In the meantime, we have amended the final rule to take into account the fact that it may not be necessary to refer a case to another State in order to take appropriate enforcement actions by adding the words ''if referral is appropriate'' to section 308.2(g)(1)(i). Accordingly, the 20-day time period for referring a case to another State's central registry when it is determined that the non-custodial parent is in another State applies only where referral is necessary in order to take the appropriate action on the case.

Commenter: One commenter noted that the regulation at section 308.2(g) refers to current regulations on interstate case processing. The commenter thought it is important to note, however, that these regulations no longer reflect the reality of interstate case processing. Direct income withholding, direct lien filing and expanded jurisdiction for establishment of a support order have lessened the need for States to automatically refer a case to another jurisdiction simply upon finding the parent in another jurisdiction. The commenter thinks more accurate policy interpretations may be found in OCSE–AT–98–30. At a minimum, the commenter thinks comments and guidance in this regulation should acknowledge this deficiency and reference the work being done to update the regulations such as the work of the Interstate Reform Initiative.

Response: As noted in the previous response, we have amended the final rule to take into account these changes until revised interstate case processing regulations are issued.

Comment: One commenter believes that since implementation of a SDU is an administrative requirement, it is not a case level program criterion and should not be included in a self-assessment review. The commenter also questioned how the standard could be measured at the 75 percent standard and recommended that the requirement be deleted.

Response: We have revised the language in section 308.2(d) to make it clearer that the 75 percent requirement applies only to the timing of disbursements of collections. We also deleted 308.2(d)(1) which would have required the implementation of an SDU.

Comment: One commenter believed section 308.2(d)(2) required review of all payments received on a case during the previous quarter. Since some cases might have 12 payments this could increase the possibility of noncompliance and is not what the workgroup said in the OCSE–AT–98–12. The commenter suggests using either the workgroup recommendation or limiting the payments reviewed to the 3 most recent collections received within the last quarter of the review period.

Response: In accordance with the workgroup recommendation, we have revised section 308.2(d)(2) to indicate that States must review against the last payment received for each case.

Comment: One commenter believed it is inappropriate to allow States to treat a case as meeting the requirements if a result was achieved within the annual review period notwithstanding the timeframes. The commenter recommends requiring States to determine and report its actual level of performance and the associated 90 percent confidence intervals. The commenter wants the regulation to make clear that the compliance levels of 75 percent or 90 percent represent minimum performance levels that trigger a requirement of a corrective action plan.

Response: We agree that the compliance levels represent minimum performance levels and encourage States to perform beyond these levels. However, we are not requiring States to report their actual levels of performance to us because this is a State management tool. Additionally, while timeframes are important in ensuring the provision of effective and timely services, States' primary focus should be on whether bottom line results of providing child support services are being achieved. We would however expect States to address any problems they are having in meeting the required timeframes in the corrective action section of their reports.

Comment: One commenter recommended that the self-assessment also include review of State performance in other key areas such as effectiveness in providing services to families leaving TANF.

Response: We encourage States to go as far beyond the minimum standards stated in the regulation as they choose. Section 308.3 provides States the option to report on such performance.

Comment: One commenter thought the section of the preamble describing section 308.2(f) should be rewritten. The segment stating ''notices to the custodial and non-custodial parents informing them of their rights to request reviews within 180 days of determining that a review should be conducted'' appears to be a combination of two truncated phrases (one dealing with the notice of right to request review and the other dealing with the 180 day time frame for completing a review). Even after editing this sentence, the grammar in this entire paragraph needs to be reworked.

Response: We do not agree that substantial rewriting is needed of either the preamble or the regulatory language. We have made some minor changes to the regulatory language in section

308.2(f) which makes the section clearer.

Comment: One commenter wrote that section 308.2(c)(3)(i) regarding orders that were needed for enforcement during the review period should not include the phrase ''at a minimum, all of the,'' referring to locate sources since the regulations regarding locate in section 303.3 do not require all of the locate sources listed to be used.

Response: We agree and have made the requested change to section 308.2(c)(3)(i).

Comment: One commenter was concerned that the wording in section 308.2(b)(2) is not consistent with its subsection (iv), since the former refers to situations where an ''order was required, but not established'' and the latter lists ''establishing an order'' as a possible outcome.

Response: We do not agree that this language is inconsistent. Section 308.2(b)(2) states that ''if an order was required, but not established during the review period,'' subsections (i) through (iv) are a list of possible last required actions. If establishment of an order was the last required action on the case and the State failed to establish the order, section 308.2(b)(2)(iv) would apply. We do not think rewriting is necessary.

Comment: One commenter requested we define ''enforcement collection'' as used in section 308.2(c)(2).

Response: In section 308.2(c)(2) a typing mistake appeared in the NPRM. The first sentence should read ''If income withholding was not appropriate, and a collection was received. * * * The final rule corrects this error.

Comment: We received two comments about section 308.2(c)(3)(iv). The comments concerned the deadlines for actions to be taken. The commenters' understanding is that the requirement to send an income withholding order to the employer within two business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires applies only at the point in time when a statewide automated system is in place.

Response: The requirement to send an income withholding notice within two business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires is not tied to the implementation of a statewide automated System. Pursuant to sections 453A(f) and (g) of the Act, States were required to match the social security numbers of newly hired employees with those of individuals in the State case registry beginning not later than May 1, 1998. Notice of a match is required to be sent to the IV–D agency which in turn was required to send an income withholding order to the employer within two business days of the entry of the employee's name in the SDNH. In addition, section 454A(g)(1) of the Act requires transmission of withholding orders and notices to employers within two business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service or another source recognized by the State. This requirement was effective not later than October 1, 1999. We revised section 308.2(c)(3)(iv) to specify and correct the timeframes for sending a notice to the employer to withhold income if information is obtained from the State Directory of New Hires or other recognized sources.

Comment: One commenter notes that section 308.2 fails to include a number of the general case evaluation rules set forth in Exhibit 1 of the OCSE–AT–98–12. For example, the Exhibit directs that certain cases should be excluded from further analysis because there was insufficient time to take the required case action or that the case documentation cannot be located or is inadequate. The commenter recommends amending the section to include the general case evaluation directions set forth in the exhibit.

Response: OCSE–AT–98–12 does not apply to this rule and therefore it would not be appropriate to attach the exhibit to the final rule. However, if insufficient time has elapsed during the review period to take the required action in the case, we would suggest they exclude the case from the sample as OCSE did when performing compliance audits. The State's failure to locate a case or the lack of documentation on the case is not a basis for case exclusion. If a case is lost or lacks documentation, we would question what, if any, service was provided to the IV–D client. It should be noted that the self-assessment process allows for a certain number of cases to be discounted as not meeting the requirements. We do not support broad exclusions of lost or non-documented cases, as that would not support the goals of the self-assessment process.

Comment: One commenter thought the final rule should require States to analyze and report on complaints filed as part of the self-assessment.

Response: While we recognize the importance of customer service in providing service to families and children, in writing this regulation we were trying to stay as close as possible to focusing on the responsibilities for child support service delivery in accordance with Federal mandates. We encourage States to report on customer service or other issues in the optional program direction or program service enhancement areas.

Comment: One commenter suggested we allow States to review cost of living adjustments (COLA) for purposes of adjusting orders instead of the review and adjustment processes.

Response: We think the regulation already allows States this flexibility. The regulation at section 308.2(f)(2)(iv) allows States to use COLA or automated methods to review and adjust support orders.

Comment: One commenter suggested renumbering subsections 308.2(f)(2)(iii) and (iv) because these subsections deal with ''notice of right to request review'' requirements which should stand apart from the review and adjustment process covered earlier in the subsection.

Response: We agree and have made revisions to this section in the regulation.

Optional Program Areas of Review—308.3

Comment: One commenter thought this section should be deleted from the regulations as it addresses optional areas of review and has no statutory basis.

Response: Under section 1102 of the Act, the Secretary has the authority to regulate beyond the statute if we think it is necessary for the efficient administration of the program. We believe the optional aspects are beneficial and add an extra dimension to the self-assessments. They are, as noted, optional.

Comment: Two commenters recommended that analysis of program direction and service enhancements be mandatory.

Response: While we appreciate that the commenters were concerned about adding to the breadth of the self-assessment review in this manner, we do not believe it is necessary to mandate these aspects of the self-assessments at this time. Should circumstances change over time we may revisit these regulations as warranted.

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 rule is consistent with these priorities and principles. The changes in this rule contain the Secretary's standards for State self-assessment reviews that largely replace previously required mandatory Federal audits. The

rule was determined to be significant and was reviewed by the Office of Management and Budget.

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 policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments.

Paperwork Reduction Act

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 final rule. This final rule contains reporting requirements in Part 308, which the Department submitted to OMB for its review. OMB filed comment on the collection, reporting it had concerns about the utility of the collection. OCSE understands OMB is concerned about balancing the value to OCSE of the information collection against the burden placed on State CSEs to collect the information. We would like to clarify that the requirement to have a process for annual reviews of and reports to the Secretary on the State's IV–D program, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures is a requirement of section 454(15) of the Act. The Act requires that States perform self-assessments using such standards and procedures as are required by the Secretary, under which the State IV–D agency will determine the extent to which the program is operated in compliance with the Act. In addition, as stated in several places in the NPRM and in this final rule, OCSE envisions the self-assessment as a management tool to enable States to improve their CSE programs.

Section 308.1(e) contains a requirement that a State report the results of annual self-assessment reviews to the appropriate OCSE Regional Office and to the Commissioner of OCSE. The information submitted must be sufficient to measure State compliance with title IV–D requirements and case processing timeframes. The results of the report will be disseminated via ''best practices'' to other States and also be used to determine if technical assistance is needed and the use of resources to meet goals. The State plan preprint page for this requirement (page 2.15, Federal and State Reviews and Audits) was approved by OMB July 7, 1997 under OMB Number 0970–0017.

The likely respondents to this information collection include State child support enforcement agencies of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

We have resubmitted the information collection request to OMB. The information collection requirements in this final rule are not effective until approved by OMB.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 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 final rule.

We have determined that the final rule 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. 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.

Executive Order 13132 Federalism Assessment

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.'' While this rule does not have federalism implications for State or local governments as defined in the executive order, we consulted with representatives of State IV–D programs in developing the rule and their input is reflected.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 308

Auditing, Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement Program)

Dated: June 26, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Dated: August 22, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Chapter III is amended by adding a new part 308 as set forth below:

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

Sec.

308.0 Scope.
308.1 Self-assessment implementation methodology.
308.2 Required program compliance criteria.
308.3 Optional program areas of review.

Authority: 42 U.S.C. 654(15)(A) and 1302.

§ 308.0 Scope.

This part establishes standards and criteria for the State self-assessment review and report process required under section 454(15)(A) of the Act.

§ 308.1 Self-assessment implementation methodology.

(a) The IV–D agency must ensure the review meets Federal requirements and must maintain responsibility for and control of the results produced and contents of the annual report.

(b) *Sampling.* A State must either review all of its cases or conduct sampling which meets the following conditions:

(1) The sampling methodology maintains a minimum confidence level of 90 percent for each criterion;

(2) The State selects statistically valid samples of cases from the IV–D program universe of cases; and

(3) The State establishes a procedure for the design of samples and assures that no portions of the IV–D case universe are omitted from the sample selection process.

(c) *Scope of review.* A State must conduct an annual review covering all of the required criteria in Sec. 308.2.

(d) *Review period.* Each review period must cover a 12-month period. The first review period shall begin no later than 12 months after the effective date of the final rule and subsequent reviews shall each cover the same 12-month period thereafter.

(e) *Reporting.* (1) The State must provide a report of the results of the self-assessment review to the appropriate OCSE Regional Office, with a copy to the Commissioner of OCSE, no later than 6 months after the end of the review period.

(2) The report must include, but is not limited to:

(i) An executive summary, including a summary of the mandatory program criteria findings;

(ii) A description of optional program areas covered by the review;

(iii) A description of sampling methodology used, if applicable;

(iv) The results of the self-assessment reviews; and

(v) A description of the corrective actions proposed and/or taken.

§ 308.2 Required program compliance criteria.

(a) *Case closure.* (1) The State must have and use procedures for case closure pursuant to Sec. 303.11 of this chapter in at least 90 percent of the closed cases reviewed.

(2) If a IV–D case was closed during the review period, the State must determine whether the case met requirements pursuant to § 303.11 of this chapter.

(b) *Establishment of paternity and support order.* The State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed.

(1) If an order for support is required and established during the review period, the case meets the requirements, notwithstanding the timeframes for: establishment of cases as specified in Sec. 303.2(b) of this chapter; provision of services in interstate IV–D cases per § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and support order establishment under §§ 303.3(b)(3) and (5), and 303.4(d) of this chapter.

(2) If an order was required, but not established during the review period, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last actions:

(i) Opening a case within 20 days pursuant to § 303.2(b) of this chapter;

(ii) If location activities are necessary, using all appropriate sources within 75 days pursuant to § 303.3(b)(3) of this chapter. This includes all the following locate sources as appropriate: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, employment data, Department of Motor Vehicles, and credit bureaus;

(iii) Repeating location attempts quarterly and when new information is received in accordance with § 303.3(b)(5) of this chapter;

(iv) Establishing an order or completing service of process necessary to commence proceedings to establish a support order, or if applicable, paternity, within 90 days of locating the non-custodial parent, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts pursuant to §§ 303.3(c) and 303.4(d) of this chapter.

(c) *Enforcement of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. Enforcement cases include cases in which ongoing income withholding is in place as well as cases in which new or repeated enforcement actions were required during the review period.

(1) If income withholding was appropriate and a withholding collection was received during the last quarter of the review period and the case was submitted for Federal and State income tax refund offset, if appropriate, the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and income withholding in §§ 303.3(b)(3) and (5), and 303.100 of this chapter.

(2) If income withholding was not appropriate, and a collection was received during the review period, and the case was submitted for Federal and State income tax refund offset, if appropriate, then the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6) and (c) (8) and (9) of this chapter; and location and enforcement of support obligations in §§ 303.3(b)(3) and (5), and 303.6 of this chapter.

(3) If an order needed enforcement during the review period, but income was not withheld or other collections were not received (when income withholding could not be implemented), the State must determine the last required action and determine whether the action was taken within the appropriate timeframes. The following is a list of possible last required actions:

(i) If location activities are necessary, using all appropriate location sources within 75 days pursuant to Sec. 303.3(b)(3) of this chapter. Location sources include: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, Department of motor vehicles, and credit bureaus;

(ii) Repeating attempts to locate quarterly and when new information is received pursuant to § 303.3(b)(5) of this chapter;

(iii) If there is no immediate income withholding order, initiating income withholding upon identifying a delinquency equal to one month's arrears, in accordance with Sec. 303.100(c) of this chapter;

(iv) If immediate income withholding is ordered, sending a notice to the employer directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) support obligation (including any past due support obligation) of the employee, within:

(A) Two business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires and in which an information comparison conducted under section 453A(f) of the Act reveals a match;

(B) Two business days after receipt of notice of, and the income source subject to withholding from a court, another State, an employer, the FPLS or another source recognized by the State.

(v) If income withholding is not appropriate or cannot be implemented, taking an appropriate enforcement action (other than Federal and State income tax refund offset), unless service of process is necessary, within no more

than 30 days of identifying a delinquency or identifying the location of the non-custodial parent, whichever occurs later in accordance with § 303.6(c)(2) of this chapter;

(vi) If income withholding is not appropriate or cannot be implemented and service of process is needed, taking an appropriate enforcement action (other than Federal and State income tax refund offset), within no more than 60 days of identifying a delinquency or locating the non-custodial parent, whichever occurs later, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines for defining diligent efforts and § 303.6(c)(2) of this chapter;

(vii) If the case has arrearages, submitting the case for Federal and State income tax refund offset during the review period, if appropriate, in accordance with §§ 303.72, 303.102 and 303.6(c)(3) of this chapter.

(d) *Disbursement of collections.* A State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed. With respect to the last payment received for each case:

(1) States must determine whether disbursement of collection was made within two business days after receipt by the State Disbursement Unit from the employer or other source of periodic income in accordance with section 457(a) of the Act, if sufficient information identifying the payee is provided pursuant to section 454B(c) of the Act.

(2) States may delay the distribution of collections toward arrearages until resolution of any timely appeals with respect to such arrearages pursuant to section 454B(c)(2) of the Act.

(e) Securing and enforcing medical support orders. A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. A State must:

(1) Determine whether all support orders established during the review period included medical support. If not, determine whether medical support was included in the petition for support to the court or administrative authority pursuant to sec. 466(a)(19) of the Act and § 303.31(b)(1) of this chapter.

(2) If a requirement for medical support is included in the order, determine whether steps were taken to determine if reasonable health insurance was available pursuant to Sec. 303.31(a)(1) and (b)(7) of this chapter.

(3) If reasonable health insurance was available, but not obtained, determine whether steps were taken to enforce the order pursuant to § 303.31(b)(7) of this chapter.

(4) Determine whether the IV-D agency informed the Medicaid agency that coverage had been obtained when health insurance was obtained during the review period pursuant to § 303.31(b)(6) of this chapter.

(5) Determine whether the custodial parent was provided with information regarding the policy when health insurance was obtained pursuant to § 303.31(b)(5) of this chapter.

(6) Determine whether the State requested employers providing health coverage to inform the State of lapses in coverage pursuant to § 303.31(b)(9) of this chapter.

(7) Determine whether the State transferred notice of the health care provision to a new employer when a noncustodial parent was ordered to provide health insurance coverage and changed employment and the new employer provides health care coverage.

(f) *Review and adjustment of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed.

(1) If a case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8 of this chapter and the order is adjusted or a determination is made as a result of a review during the self-assessment period that an adjustment is not needed in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9) of this chapter; and location and review and adjustment of support orders contained in §§ 303.3(b)(3) and (5), and 303.8 of this chapter.

(2) If a case has not been reviewed, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last required actions:

(i) If location is necessary to conduct a review, using all appropriate location sources within 75 days of opening the case pursuant to § 303.3(b)(3) of this chapter. Location sources include: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, unemployment data, Department of Motor Vehicles, and credit bureaus;

(ii) Repeating location attempts quarterly and when new information is received pursuant to § 303.3(b)(5) of this chapter;

(iii) Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, conducting a review of the order and adjusting the order or determining that the order should not be adjusted pursuant to sec. 303.8(e) of this chapter;

(iv) If an adjustment was made during the review period using cost of living or automated methods, giving both parties 30 days to contest any adjustment to that support order pursuant to sec. 466(a)(10)(A)(ii) of the Act.

(3) The State must provide the custodial and non-custodial parents notices, not less often than once every three years, informing them of their right to request the State to review and, if appropriate, adjust the order. The first notice may be included in the order pursuant to sec. 466(a)(10)(C) of the Act.

(g) *Interstate services.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. For all interstate cases requiring services during the review period, determine the last required action and determine whether the action was taken during the appropriate timeframe:

(1) Initiating interstate cases:

(i) Except when using the State's long-arm statute for establishing paternity, if referral is appropriate, within 20 calendar days of determining that the non-custodial parent is in another State and, if appropriate, receipt of any necessary information needed to process the case, referring that case to the responding State's interstate central registry for action pursuant to § 303.7(b)(2) of this chapter.

(ii) If additional information is requested, providing the responding State's central registry with requested additional information within 30 calendar days of the request pursuant to § 303.7(b)(4) of this chapter.

(iii) Upon receipt of new information on a case, notifying the responding State of that information within 10 working days pursuant to § 303.7(b)(5) of this chapter.

(iv) Within 20 calendar days after receiving a request for review and adjustment pursuant to § 303.7(b)(6) of this chapter.

(2) Responding interstate cases:

(i) Within 10 working days of receipt of an interstate IV-D case, the central registry reviewing submitted documentation for completeness, forwarding the case to the State Parent Locator Service (PLS) for locate or to the appropriate agency for processing, acknowledging receipt of the case and requesting any missing documentation from the initiating State, and informing

the IV–D agency in the initiating State where the case was sent for action, pursuant to § 303.7(a)(2) of this chapter.

(ii) The Central registry responding to inquiries from other States within five working days of a receipt of request for case status review pursuant to § 303.7(a)(4) of this chapter.

(iii) Within 10 days of locating the non-custodial parent in a different jurisdiction or State, forwarding the case in accordance with Federal requirements pursuant to §§ 303.7(c)(5) and (6) of this chapter.

(iv) Within two business days of receipt of collections, forwarding any support payments to the initiating State pursuant to sec. 454B(c)(1) of the Act.

(v) Within 10 working days of receipt of new information notifying the initiating State of that new information pursuant to § 303.7(c)(9) of this chapter.

(h) *Expedited processes.* The State must have and use procedures required under this paragraph in the amounts specified in this paragraph in the cases reviewed for the expedited processes criterion.

(1) In IV–D cases needing support orders established, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes pursuant to Sec. 303.101(b)(2)(i) of this chapter:

(i) 75 percent in 6 months; and

(ii) 90 percent in 12 months.

(2) States may count as a success for the 6-month standard cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or non-custodial parent.

§ 308.3 Optional program areas of review.

(a) *Program direction.* A State may include a program direction review in its self-assessment for the purpose of analyzing the relationships between case results relating to program compliance areas, and performance and program outcome indicators. This review is an opportunity for States to demonstrate how they are trying to manage their resources to achieve the best performance possible. A program direction analysis could describe the following:

(1) Initiatives that resulted in improved and achievable performance accompanied with supporting data;

(2) Barriers impeding progress; and

(3) Efforts to improve performance.

(b) *Program service enhancement.* A State may include a program service enhancement report in its self-assessment that describes initiatives put into practice that improved program performance and customer service. This is an opportunity for States to promote their programs and innovative practices. Some examples of innovative activities that States may elect to discuss in the report include:

(1) Steps taken to make the program more efficient and effective;

(2) Efforts to improve client services;

(3) Demonstration projects testing creative new ways of doing business;

(4) Collaborative efforts being taken with partners and customers;

(5) Innovative practices which have resulted in improved program performance;

(6) Actions taken to improve public image;

(7) Access/visitation projects initiated to improve non-custodial parents' involvement with the children and;

(8) Efforts to engage non-custodial parents who owe overdue child support to pay that support or engage in work activities, such as subsidized employment, work experience, or job search.

(c) A State may provide any of the optional information in paragraphs (a) and (b) of this section in narrative form.

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Reader Aids

Federal Register

Vol. 65, No. 239

Tuesday, December 12, 2000

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

Public Laws Update Service (numbers, dates, etc.) **523–6641**

TTY for the deaf-and-hard-of-hearing **523–5229**

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

75153–75580 1
75581–75852 4
75853–76114 5
76115–76560 6
76561–76914 7
76915–77244 8
77245–77494 11
77495–77754 12

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5030 (See EO 13178) 76913
5928 (See EO 13178) 76913
6425 (See Proc. 7383) 76551
7219 (See EO 13178) 76913
7382 ..... 75851, 76348
7383 76551
7384 76903
7385 77495

Executive Orders:
April 17, 1926 (Revoked in part by PLO 7470) 76663
11888 (See Proc. 7383) 76551
13089 (See EO 13178) 76913
13158 (See EO 13178) 76913
13177 76558
13178 76913
13179 77487
13180 77493

5 CFR

531 75153

7 CFR

59 75464
246 77245
773 76115
774 76115
1792 76915

Proposed Rules:
15 76115
15b 76115
301 76582
319 75187
930 77323
1000 76832
1001 76832
1005 76832
1006 76832
1007 76832
1030 76832
1032 76832
1033 76832
1124 76832
1126 76832
1131 76832
1135 76832

8 CFR

Proposed Rules:
208 ..... 76121, 76588

9 CFR

78 75581

Proposed Rules:
1 75635
381 75187
424 75187

10 CFR

72 ..... 75869, 76896
440 77210

Proposed Rules:
4 76480
72 ..... 75869, 76899
50 76178
430 75196
1040 76480

11 CFR

100 76138
109 76138
110 76138

12 CFR

3 75856
8 75859
14 75822
19 77250
208 ..... 75822, 75856
225 75856
325 75856
343 75822
536 75822

Proposed Rules:
3 76180
5 ..... 75870, 75872
8 75196
9 75872
208 76180
225 76180
325 76180
567 76180
584 77528

13 CFR

Proposed Rules:
112 76480
117 76480
121 76184

14 CFR

25 ..... 76147, 77252
39 ..... 75582, 75585, 75588, 75590, 75592, 75595, 75597, 75599, 75601, 75603, 75605, 75608, 75610, 75611, 75613, 75615, 75617, 75618, 75620, 75624, 75625, 76149, 77259, 77261, 77263
71 ..... 76150, 77282, 77497
73 76151

Proposed Rules:
39 ..... 75198, 75877, 75879, 75881, 75883, 75887, 76185, 76187, 76950, 76953, 77528, 77530

1250.....76460
1251.....76460
1252.....76460

15 CFR

736.....76561
744.....76561
801.....77282
902.....77450
930.....77124
Proposed Rules:
8.....76460
8b.....76460
20.....76460

16 CFR

300.....75154
303.....75154

17 CFR

210.....76012
240 .....75414, 75439, 76012
242.....76562
270.....76189

18 CFR

11.....76916
33.....76009
284.....75628, 77285
Proposed Rules:
1302.....76460
1307.....76460
1309.....76460

21 CFR

16.....76096
73.....75158
101.....76096
115.....76096
179.....76096
510.....76924
514.....76924
556.....76930
558.....76924
660.....77497
876.....76930
Proposed Rules:
101.....75887
660.....77532
1308.....77328

22 CFR

Proposed Rules:
141.....76460
142.....76460
143.....76460
209.....76460
217.....76460
218.....76460

23 CFR

Proposed Rules:
945.....77534

24 CFR

5.....77230
200.....77230
Proposed Rules:
30.....76520

25 CFR

20.....76563
Proposed Rules:
580.....75888

26 CFR

1.....76932
31.....76152
Proposed Rules:
1.....76194
31.....76194

28 CFR

16.....75158, 75159
Proposed Rules:
16.....75201
42.....76460

29 CFR

1625.....77438
1910.....76563
4006.....75160, 77429
4007.....75160, 77429
4011.....75164
4022.....75164
4044.....75165
Proposed Rules:
31.....76460
32.....76460
1910.....76598

30 CFR

42.....77292
47.....77292
56.....77292
57.....77292
77.....77292
250.....76933
Proposed Rules:
938.....76954
948.....75889

31 CFR

1.....76009
29.....77500
Ch. V.....75629

32 CFR

Proposed Rules:
311.....75897

33 CFR

100 .....76153, 77512, 77513
117.....76154, 76935
Proposed Rules:
97.....75201
117.....76956
165.....76195

34 CFR

373.....77432

36 CFR

800.....77698
Proposed Rules:
18.....77538

37 CFR

1.....76756
201.....77292
253.....75167
Proposed Rules:
201.....77330

38 CFR

1.....76937
Proposed Rules:
18.....76460
36.....76957

39 CFR

20 .....76154, 77076, 77302
111 .....75167, 75863, 77515
Proposed Rules:
111.....75210

40 CFR

9.....76708
52 .....76567, 76938, 77307, 77308
60 .....75338, 76350. 76378
63.....76941
81.....77308
141.....76708
142.....76708
180 .....75168, 75174, 76169, 76171
300.....75179, 76945
Proposed Rules:
7.....76460
52 .....75215, 76197, 76958, 77695
55.....77333
63.....76460, 76958
81.....76303, 77544
86.....76797
94.....76797
261 .....75637, 75897, 77429
268.....75651
300.....75215, 76965
1048.....76797
1051.....76797

41 CFR

Proposed Rules:
101-6.....76460
101-8.....76460

42 CFR

Proposed Rules:
36.....75906

43 CFR

Proposed Rules:
17.....76460

44 CFR

64.....75632
Proposed Rules:
7.....76460
67.....75908

45 CFR

270.....75633
276.....75633
308.....77742
Proposed Rules:
605.....76460
611.....76460
617.....76460
1110.....76460
1151.....76460
1156.....76460
1170.....76460
1203.....76460
1232.....76460

46 CFR

67.....76572
207.....77521

47 CFR

73 .....76947, 76948, 77318
76.....76948
Proposed Rules:
0.....77545
1.....77545
43.....75656
61.....77545
69.....77545
73 .....75221, 75222, 762096, 76207, 77338
80.....76966

48 CFR

1504.....75863
1552.....75863
Proposed Rules:
1842.....76600
1852.....76600

49 CFR

195.....75378
611.....76864
1002.....76174, 77319
Proposed Rules:
21.....76460
27.....76460
107.....76890
195.....76968
567.....75222
571.....75222, 77339
574.....75222
575.....75222

50 CFR

20.....76886
230.....75186
300.....75866
600.....77450
635.....75867, 77523
648 .....76577, 76578, 77450, 77470
679.....76175, 76578
Proposed Rules:
17.....76207, 77178
216.....75230, 77546
600.....75911, 75912
635.....76601
648.....75232, 75912
697.....75916

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 12, 2000

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Child support enforcement program:
State self-assesment review and report; published 12-12-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; published 11-7-00
Empresa Brasileira de Aeronautica, S.A.; published 11-7-00
Teledyne Continental Motors; published 11-27-00

TRANSPORTATION DEPARTMENT
Maritime Administration
Practice and procedure:
Operating-differential subsidy application hearings; statistical data use; CFR part removed; published 12-12-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Artificially dwarfed plants in growing media from China; comments due by 12-20-00; published 12-1-00

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Sugarcane; comments due by 12-18-00; published 10-18-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permits; comments due by 12-20-00; published 12-5-00
Northeastern United States fisheries—
Summer flounder, scup, and black sea bass; comments due by 12-19-00; published 11-28-00
West Coast States and Western Pacific fisheries—
Western Pacific pelagic; comments due by 12-18-00; published 11-3-00
International fisheries regulations:
Fraser River sockeye and pink salmon; inseason orders; comments due by 12-20-00; published 12-5-00

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Rubber tire manufacturing facilities; comments due by 12-18-00; published 10-18-00
Air quality implementation plans; approval and promulgation; various States:
Massachusetts; comments due by 12-18-00; published 10-26-00
Texas; comments due by 12-20-00; published 11-20-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-22-00; published 11-22-00
National priorities list update; comments due by 12-22-00; published 11-22-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Incumbent local exchange carriers; accounting and ARMIS reporting requirements; comprehensive review; biennial regulatory review (Phases 2 and 3); comments due by 12-21-00; published 11-13-00
Frequency allocations and radio treaty matters:
3650-3700 MHz band and 4.9 GHz band; transfer from Federal Government use; comments due by 12-18-00; published 11-17-00
Radio stations; table of assignments:
Alabama; comments due by 12-18-00; published 11-13-00
Arizona; comments due by 12-18-00; published 11-13-00
Colorado and California; comments due by 12-18-00; published 11-13-00
Georgia; comments due by 12-18-00; published 11-13-00
Tennessee; comments due by 12-18-00; published 11-13-00
West Virginia; comments due by 12-18-00; published 11-13-00
Television broadcasting:
Children's television programming reports; filing requirements extension; comments due by 12-18-00; published 11-9-00
Commercial television station public interest obligations; standardized and enhanced disclosure; comments due by 12-18-00; published 10-19-00
Digital television broadcasters; children's television obligations; comments due by 12-18-00; published 11-8-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Child Support Enforcement Office
Child support enforcement program:
Indian Tribe and Tribal organization funding; comments due by 12-19-00; published 8-21-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Anesthesiology devices—
Apnea monitor; special controls; comments due by 12-21-00; published 9-22-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Clinical social worker services; coverage and payment; comments due by 12-18-00; published 10-19-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Medical facility construction and modernization:
Uncompensated services; compliance alternatives; comments due by 12-18-00; published 10-19-00

INTERIOR DEPARTMENT
Indian Affairs Bureau
Tribal government:
Certificate of degree of Indian or Alaska Native blood; documentation requirements and filing, processing, and issuing requirements and standards; comments due by 12-20-00; published 10-30-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Recovery plans—
Zayante band-winged grasshopper; comments due by 12-21-00; published 12-6-00

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Rate relief or reduction; deep water royalty relief for post-2000 OCS oil and gas leases; comments due by 12-18-00; published 11-16-00
Correction; comments due by 12-18-00; published 11-22-00

MANAGEMENT AND BUDGET OFFICE
Federal Procurement Policy Office
Acquisition regulations:
Cost Accounting Standards Board—
Post retirement benefit plans sponsored by government contractors; cost accounting standard; comments due by 12-19-00; published 10-5-00

PERSONNEL MANAGEMENT OFFICE
Employment:
Reduction in force—
Retreat rights; comments due by 12-19-00; published 10-20-00

SOCIAL SECURITY ADMINISTRATION
Supplemental security income:
Aged, blind, and disabled—

Consumer reporting agencies information disclosure; administrative offset against Federal payment; comments due by 12-22-00; published 10-23-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
New York annual fireworks displays, NY; safety zones; comments due by 12-18-00; published 11-2-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Israel Aircraft Industries, Ltd.; comments due by 12-18-00; published 11-17-00
McDonnell Douglas; comments due by 12-20-00; published 11-20-00
Pratt & Whitney; comments due by 12-18-00; published 11-16-00

Airworthiness standards:
Special conditions—
Bombardier Model CL-600-2C10 series airplanes; comments due by 12-18-00; published 11-3-00

Class E airspace; comments due by 12-22-00; published 11-22-00

Commercial space transportation:
Launch site operation; licensing and safety requirements; solid propellants handling and cooperation with National Transportation Safety Board; comments due by 12-18-00; published 10-19-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Child restraint systems—
Safety plan; comments due by 12-22-00; published 11-27-00

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
Harmonization with UN recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; comments due by 12-22-00; published 10-23-00

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.

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H.J. Res. 127/P.L. 106–539

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 7, 2000; 114 Stat. 2570)

Last List December 8, 2000

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