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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1413 and 1427

RIN 0560–AD39

1995 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On September 27, 1994, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the 1995 Upland Cotton Production Adjustment Program, which is conducted by CCC in accordance with the Agricultural Act of 1949, as amended (1949 Act). The 1995 Upland Cotton Acreage Reduction Program (ARP) percentage has been determined to be zero percent. This final rule amends the regulations to set forth the ARP and the price support rate for the 1995 crop of upland cotton. No paid land diversion (PLD) program will be implemented for the 1995 crop of upland cotton. These actions are required by section 103B of the 1949 Act.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Wayne E. Bjorlie, Consolidated Farm Service Agency, United States Department of Agriculture, room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1427 set forth in this final rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of the selected option is available on request from the above-named individual.

Background

This final rule amends 7 CFR part 1413 to set forth determinations on the 1995 ARP and PLD programs, and 7 CFR part 1427 to set forth the determination of the 1995 upland cotton price support level. General descriptions of the statutory basis for the 1995 upland cotton ARP percentage determination in this final rule were set forth at 59 FR 49214 (September 27, 1994).

Nineteen comments were received regarding the 1995 ARP level. Twelve respondents recommended that the ARP level be set at zero percent, and one requested that a zero-percent ARP be considered. Another respondent requested that the ARP be set at the lowest possible percentage which would result in a stocks-to-use ratio of 29.5 percent. One respondent requested that the ARP level be set no higher than 5 percent and another recommended 5 percent. One respondent requested the ARP be set no higher than 8 percent. One commented that the ARP be set at 10 percent, and another recommended the ARP be set at no less than 15 percent.

After considering these comments, the Secretary of Agriculture (Secretary) on October 31, 1994, announced a 7.5-percent ARP level and a price support level of 51.92 cents per pound for the 1995 marketing year. The Secretary also announced that no PLD program will be offered. On December 21, 1994, a final ARP requirement of zero percent was announced for the 1995 crop of upland cotton. The Secretary determined that, based upon the most recent projections of carryover and total disappearance, a zero-percent ARP would result in a ratio of carryover to total disappearance of 29.5 percent.

Acreage Reduction Program

In accordance with section 103B(e)(1) of the 1949 Act, an ARP of zero percent has been established for the 1995 crop of upland cotton.

Paid Land Diversion

In accordance with section 103B(e)(5)(A) of the 1949 Act, a PLD program will not be made available to producers of 1995-crop upland cotton.

Price Support Rate

In accordance with section 103B(a)(1)(3) of the 1949 Act, the price support rate has been established with respect to the 1995 crop of upland cotton at 51.92 cents per pound.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1427 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended to read as follows by:

A. Revising paragraphs (a)(3)(iii) and (a)(3)(iv),

B. Adding paragraph (a)(3)(v), and

C. Adding paragraph (d)(5)(iii):

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(3) * * *

(iii) 1993 upland cotton, 7.5 percent;

(iv) 1994 upland cotton, 11.0 percent; and

(v) 1995 upland cotton, 0 percent.

* * * * *

(d) * * *

(5) * * *

(iii) Shall not be made available to producers of the 1995 crop upland cotton.

* * * * *

PART 1427—COTTON

3. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

4. Section 1427.8 is amended to read as follows by:

A. Revising paragraphs (a)(1)(iii) and (a)(1)(iv); and

B. Adding paragraph (a)(1)(v):

§ 1427.8 Amount of loan.

(a) * * *

(1) * * *

(iii) 1993 upland cotton, 52.35 cents per pound;

(iv) 1994 upland cotton, 50.00 cents per pound; and

(v) 1995 upland cotton, 51.92 cents per pound.

* * * * *

Signed at Washington, DC, on June 8, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–14752 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–103–AD; Amendment 39–9277; AD 95–12–24]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This action requires an inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 at butt line (BL) 42.5, and repair or additional inspections, if necessary. This amendment is prompted by reports indicating that fatigue cracking was found in the rear bulkhead at FS 1363. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage due to fatigue cracking of the pressure bulkhead.

DATES: Effective July 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking was found in the rear bulkhead of the center section pressure deck at fuselage station (FS) 1363 on a Lockheed Model L–1011–385 series airplane. The cracking extended approximately 30 inches downward along butt line (BL) 42.5 and through the frame at the lower edge of the bulkhead. At that point, the cracking extended aft an additional 26 inches through a skin panel on the lower fuselage. The cause of this cracking appears to be fatigue. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage.

Lockheed has issued L–1011 Service Bulletin 093–53–268, dated April 15, 1993, which describes procedures for certain inspections to detect cracking of the bulkhead at FS 1363 in the area of the stiffeners at left and right BL 42.5, and repair, if necessary. The repair involves installing web doublers and a splice.

The Lockheed service bulletin specifies that repair of cracking may be delayed if the cracking falls within certain parameters described in the service bulletin. For these cases, the service bulletin specifies procedures for accomplishing repetitive visual and eddy current inspections until the repair is accomplished. The FAA has reviewed and approved the procedures specified in this Lockheed service bulletin.

The FAA also has reviewed and approved a second document issued by Lockheed: LCC–7622–373, dated May 9, 1995. This document describes procedures for additional inspections to detect cracking of the frame cap for airplanes on which cracking of the bulkhead is found below waterline (WL) 117. Those inspections include the following:

—A bolt hole eddy current inspection to detect cracking of the eight fastener holes at the intersection of the vertical stiffener at BL 42.5 and the frame cap vertical flange;

—A bolt hole eddy current inspection to detect cracking at eight fastener locations in the frame cap lower flange that connect the lower fuselage skin panel to the frame at the BL 42.5 vertical stiffener; and

—A visual inspection to detect stress corrosion cracking of the accessible portions of the fillet radius of the frame cap.

A third document issued by Lockheed, LCC–7622–374, dated May 9, 1995, is referenced in LCC–7622–373. LCC–7622–374 describes procedures for repair of any cracking of the frame cap that is found during the inspections described previously. The repair involves a bolt hole eddy current inspection to detect cracking of the fastener holes (where the fastener holes are removed to perform the repair), and removal of cracks. The FAA has reviewed and approved Lockheed documents LCC–7622–373 and LCC–7622–374.

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed Model L–1011–385 series airplanes of the same type design, this AD is being issued to prevent reduced structural integrity of the fuselage due to fatigue cracking of the pressure bulkhead. This AD requires a visual inspection to detect cracking of the bulkhead at FS 1363 in the area of the stiffeners at left and right BL 42.5, and repair, if necessary. For airplanes on which cracking of the bulkhead is found below WL 117, this AD requires additional inspections to detect cracking at certain fastener locations and fastener holes and to detect stress corrosion of the frame cap, and repair, if necessary. The actions are required to be accomplished in accordance with the procedures specified in the service bulletin and in the Lockheed documents described previously.

This AD contains provisions specifying that flight with cracking in the bulkhead, within certain parameters, is allowed provided that repetitive visual and eddy current inspections are performed until a repair is accomplished.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–103–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–12–24 Lockheed Aeronautical Systems Company: Amendment 39–9277. Docket 95–NM–103–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

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

owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage due to fatigue cracking of the pressure bulkhead, accomplish the following:

(a) Prior to the accumulation of 18,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a visual inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 in the area of the stiffeners at left and right butt line (BL) 42.5, in accordance with the procedures specified in paragraphs 2.A. and 2.B. of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993.

Note 2: This AD does not require that the eddy current inspection referenced in paragraph 2.B. of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993, be accomplished as a requirement of paragraph (a) of this AD.

(b) If no cracking of the bulkhead is detected, no further action is required by this AD.

(c) Except as provided by paragraph (e) of this AD, if any cracking of the bulkhead is detected below waterline (WL) 117: Prior to further flight, perform the inspections required by paragraphs (c)(1), (c)(2), and (c)(3) of this AD, in accordance with LCC–7622–373, dated May 9, 1995. Prior to further flight, repair any cracking of the frame cap found during these inspections, in accordance with Lockheed document LCC–7622–374, dated May 9, 1995.

(1) Perform a bolt hole eddy current inspection to detect cracking of the eight fastener holes at the intersection of the vertical stiffener at BL 42.5 and the frame cap vertical flange; and

(2) Perform a bolt hole eddy current inspection to detect cracking at eight fastener locations in the frame cap lower flange that connect the lower fuselage skin panel to the frame at the BL 42.5 vertical stiffener; and

(3) Perform a visual inspection to detect stress corrosion cracking of the accessible portions of the fillet radius of the frame cap.

(d) Except as provided by paragraph (e) of this AD, if any cracking of the bulkhead is detected at or above WL 117: Prior to further flight, repair the bulkhead cracking in accordance with the procedures specified in Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993.

(e) Continued flight with cracking of the bulkhead is permitted, provided that the conditions specified in paragraph 1.C. of the Planning Information of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993, are met. For flight with cracking, both the visual and eddy current inspections specified in paragraphs 2.B. and 2.C. of the Accomplishment Instructions of the service bulletin must be accomplished prior to returning the aircraft to service. These visual and eddy current inspections must be repeated within 900 landings. Prior to the accumulation of 1,800 total landings, these inspections must be terminated by the installation of the repair specified in Part II of the Accomplishment Instructions of the service bulletin.

(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, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

(h) The inspections and repair shall be done in accordance with Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; Lockheed document LCC–7622–373, dated May 9, 1995; and Lockheed document LCC–7622–374, dated May 9, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 3, 1995.

Issued in Renton, Washington, on June 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14633 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–250–AD; Amendment 39–9269; AD 95–12–18]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires a visual inspection to verify proper clearance between the engine fuel supply-line and the hydraulic line in certain areas, and replacement of damaged fuel lines. This amendment would also require installation of additional clamps on the out line of the lift-dumper in certain cases. This amendment is prompted by a report indicating that fuel was found leaking from the right-hand wheel bay on one airplane due to chafing of the fuel supply line. The actions specified by this AD are intended to prevent such chafing, which could result in fuel leakage, and, subsequently, lead to a possible fire hazard and engine fuel depravation.

DATES: Effective July 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on January 17, 1995 (60 FR 3358). That action proposed to require a one-time visual inspection to verify proper

clearance between the engine fuel supply-line and the hydraulic line in zones 631 and 531. It also proposed to require an inspection to detect damage of fuel lines, and replacement of damaged fuel lines. That action also proposed to require installation of two additional clamps on the out line of the lift-dumper in cases where clearance is less than 3mm (0.118 inch) and no damage is detected on the fuel lines.

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

One commenter supports the proposed rule.

One commenter requests that the FAA revise paragraphs (a)(3) and (a)(4) of the proposed rule to remove the phrase ''in accordance with the service bulletin.'' The commenter recommends describing the clamping procedures in general terms, such as ''addition of clamps as required to provide the prerequisite clearance,'' instead of mandating that these procedures be accomplished in accordance with a specific service document. The FAA does not concur. The FAA has determined that the commenter's request to require ''addition of clamps * * *'' is too vague to provide adequate guidance as to what is required of operators, and for the FAA to perform proper surveillance of these operators to ensure that the objectives of the AD are being fulfilled. Under provisions of paragraph (b) of the final rule, however, operators may apply for approval of an alternative method of compliance, such as different clamping procedures.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,980, or $60 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–12–18 Fokker: Amendment 39–9269. Docket 94–NM–250–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11438 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel supply line, which could result in fuel leakage, and, subsequently, lead to a possible fire hazard and engine fuel depravation, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to verify proper clearance between the engine fuel supply-line and the hydraulic line in zones 631 and 531 and to detect damage of the fuel supply-line, in accordance with Fokker Service Bulletin SBF100–28–026, dated March 12, 1993.

(1) If the clearance is found to be 3mm (0.118 inch) or more and no damage is found, no further action is required by this AD.

(2) If the clearance is found to be 3mm or more and damage is found, prior to further flight, replace the damaged fuel line in accordance with the service bulletin.

(3) If the clearance is found to be less than 3mm and no damage is found, within 6 months after the effective date of this AD, install 2 additional clamps on the out line of the lift-dumper, in accordance with the service bulletin.

(4) If the clearance is found to be less than 3mm and damage is found, prior to further flight, replace the damaged fuel line, and install 2 additional clamps on the out line of the lift-dumper, in accordance with the service bulletin.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspection, replacement, and installation shall be done in accordance with Fokker Service Bulletin SBF100–28–026, dated March 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 17, 1995.

Issued in Renton, Washington, on June 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14166 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–17–AD; Amendment 39–9266; AD 95–12–15]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires replacement of a certain pressure switch with a certain new pressure switch in the fuel system for the engines. This amendment is prompted by a report indicating that the current design of a certain pressure switch in the fuel system for the engines does not meet current fire resistant properties, which could result in the failure of the pressure switch during a fire in the engine compartment. The actions specified by this AD are intended to prevent failure of the existing pressure switch in the fuel system for the engines, which, during an engine fire, could result in fuel leakage that could add fuel to the fire.

DATES: Effective July 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on March 16, 1995 (60 FR 14237). That action proposed to require replacement of a certain pressure switch with a certain new pressure switch in the fuel system of the left and right engine.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,700, or $180 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–12–15 Jetstream Aircraft Limited: Amendment 39–9266. Docket 95–NM–17–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41046 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the existing pressure switch in the fuel system of the left and right engine, which, during an engine fire, could result in fuel leakage that could add fuel to the fire, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace pressure switch having part number (P/N) 1153P0073 with a new pressure switch having P/N 1153P0094 in the fuel system of the left and right engine, in

accordance with Jetstream Service Bulletin J41–73–007, dated November 22, 1994.

(b) As of the effective date of this AD, no person shall install a pressure switch, P/N 1153P0073, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The replacement shall be done in accordance with Jetstream Service Bulletin J41–73–007, dated November 22, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 17, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14054 Filed 6–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–05–AD; Amendment 39–9264; AD 95–12–14]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires an inspection to determine the adequacy of clearance between the normal maximum (second) detent for the reverse thrust control and the surrounding moving parts, and to detect chafing or damage of the detent. This amendment also requires eventual replacement of the normal maximum detent with an improved detent. This amendment is prompted by a report indicating that an inadequate level of clearance between the normal maximum detent and the surrounding parts may exist on earlier production Model F28 Mark 0100 series airplanes. The actions specified by this AD are intended to ensure proper operation of the normal maximum detent for reverse thrust control.

DATES: Effective July 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on March 3, 1995 (60 FR 11945). That action proposed to require a one-time inspection to determine the adequacy of clearance between the normal maximum detent for the reverse thrust control and the surrounding moving parts, and to detect chafing or damage of the normal maximum detent. It also proposed to require the eventual replacement of the normal maximum detent with a new normal maximum detent.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,000, or $1,000 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–12–14 Fokker: Amendment 39–9264. Docket 95–NM–05–AD.

Applicability: Model F28 Mark 0100 series airplanes; having serial numbers 11244 through 11261 inclusive, 11263, and 11268 through 11283 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the normal maximum detent for reverse thrust control, accomplish the following:

(a) For airplanes on which Fokker Service Bulletin SBF100–76–008, dated May 8, 1991, has been accomplished: Within 1,500 flight cycles after the effective date of this AD, perform an inspection to determine the adequacy of clearance between the normal maximum (second) detent for the reverse thrust control and the surrounding moving parts and to detect chafing or damage of the normal maximum detent, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–010, dated October 31, 1993.

(1) If any chafing or damage is found (regardless of clearance), prior to further flight, replace the normal maximum detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(2) If the clearance is found to be inadequate, but no chafing or damage is found, within 250 flight cycles following the inspection required by paragraph (a) of this AD, replace the normal maximum detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(3) If the clearance is found to be adequate and no damage or chafing is found, within 3,000 flight cycles following the inspection required by pararaph (a) of this AD, replace the detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(b) For airplanes on which Fokker Service Bulletin SBF100–76–008, dated May 8, 1991, has not been accomplished: Within the next 500 flight cycles after the effective date of this AD, replace the normal maximum detent for reverse thrust control with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–010, dated October 31, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The inspection and replacement shall be done in accordance with Fokker Service Bulletin SBF100–76–010, dated October 31, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 17, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14052 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ASO–7]

Establishment of Class D Airspace; Jackson, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace at Jackson, TN. A non-federal control tower has been commissioned at the McKeller-Sipes Regional Airport. Class D airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for instrument flight rules (IFR) operations at the airport. This action also modifies the Class E2 airspace designation to clarify the airspace as part-time when the control tower is closed.

EFFECTIVE DATE: 0901 u.t.c., September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1995 the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Jackson, TN, (60 FR 15884). This action would provide adequate Class D airspace for IFR operations at the McKellar-Sipes Regional Airport. This action would also modify the Class E2 airspace designation to clarify the airspace as part-time when the control tower is closed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Jackson, TN, to accommodate current SIAPs and for IFR operations at the McKellar-Sipes Regional Airport, as a result of a non-federal control tower commissioned at the airport. This action also modifies the Class E2 airspace designation to clarify the airspace as part-time when the control tower is closed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class D Airspace

* * * * *

ASO TN D Jackson, TN [New]

McKellar-Sipes Regional Airport, TN
(Lat. 35°36′13″ N, long. 88°54′38″ W)
McKellar VOR/DME
(Lat. 35°36′13″ N, long. 88°54′38″ W)

That airspace extending upward from the surface to and including 2900 feet MSL within a 4.2-mile radius of the McKellar-Sipes Regional Airport and within 3.1 miles each side of the McKellar VOR/DME 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VOR/DME. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASO TN E2 Jackson, TN [Revised]

McKellar-Sipes Regional Airport, TN
(Lat. 35°35′59″ N, long. 88°54′56″ W)
McKellar VOR/DME
(Lat. 35°36′13″ N, long. 88°54′38″ W)

Within a 4.2-mile radius of the McKellar-Sipes Regional Airport and within 3.1 miles each side of the McKellar VOR/DME 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VOR/DME. This Class E Airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 8, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 95–14788 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–4]

Amendment to Class E Airspace; Worland, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on May 9, 1995, that inadvertently changed the Worland, Wyoming, Class E5 airspace designation. This action corrects the final rule by reflecting the proper and continuous operation of the Worland, Wyoming, Class E airspace area.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1995.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION: On May 9, 1995, the FAA published a final rule that changed the Worland, Wyoming, Class E5 airspace designation (60 FR 24556). However, that action was an inadvertent error. This action corrects the final rule by reflecting the proper and continuous operation of the Worland, Wyoming, Class E airspace area.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace description at Worland, Wyoming, as published in the **Federal Register** on May 9, 1995 (60 FR 24556), (Federal Register Document No. 95–11275; page 24557, column 1), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM WY E5 Worland, WY [Corrected]

Worland Municipal Airport , WY
(Lat. 43°57′56″ N, long. 107°57′01″ W)
Worland VOR/DME
(Lat. 43°57′51″ N, long. 107°57′03″ W)

That airspace extending upward from 700 feet above the surface within 4 miles east and 8.3 miles west of the Worland VOR/DME 352° and 172° radials extending from 16.1 miles north to 5.3 miles south of the VOR/DME; that airspace extending upward from 1,200 feet above the surface, within a 20.1-mile radius of the VOR/DME, and that airspace extending upward from 10,500 feet MSL bounded on the north by lat. 44°00′00″ N, on the east by the 20.1-mile radius of the Worland VOR/DME, on the south by V–319, and on the west by V–85.

* * * * *

Issued in Seattle, Washington, on June 6, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–14786 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Office

31 CFR Part 1

Freedom of Information Act and Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury is amending its regulations implementing the Freedom of Information Act (FOIA) and the Privacy Act (PA) to add the Office of Thrift Supervision as a component of the Department and to include instructions on gaining access to information maintained by the Office of Thrift Supervision.

EFFECTIVE DATE: June 16, 1995.

ADDRESSES: Comments may be submitted to the Department of the Treasury, Disclosure Services, Room 1054–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, Disclosure Services, Department of the Treasury. Telephone (202) 622–0874.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision (OTS), as a component of the Department of the Treasury (Department), is subject to the Department's FOIA regulations at 31 CFR part 1, subpart A. The amendment adds the OTS to the list of components of the Department by inserting new language at 31 CFR 1.1(d)(13). This amendment also removes language identifying the office of the Assistant Secretary for Tax Policy as a distinct component because it is a part of the Departmental Offices and therefore, subject to appendix A of this subpart. The amendment adds language in appendix M to reflect the inclusion of OTS' FOIA appendix covering the OTS FOIA program as part of the Departmentwide regulations. The amended appendix covering the OTS FOIA program identifies the location of the public reading room. It also describes how to make a request under 31 CFR 1.5(g), administrative appeals under 31 CFR 1.5(h), and where each request or appeal should be addressed and where a request can be delivered.

The Department's Privacy Act regulations at 31 CFR part 1, Subpart C, refer to the Department's Privacy Act program as part of the Departmentwide disclosure program. The appendices to subpart C apply to all records which are contained in systems of records maintained by the Department of the Treasury, or any one of its components, and which are retrieved by an individual's name or personal identifier.

The amendment to Subpart C adds the OTS to the list of components of the Department by inserting new language at 31 CFR 1.20(m). Appendix M is being added to include the OTS' implementation of provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Appendix M sets forth the procedures by which individuals may request notification of whether the OTS maintains or has disclosed a record pertaining to them, or seek access to such records maintained in any nonexempt system of records, request correction of such records, appeal any initial adverse determination of any request for amendment.

The rules being published amending 31 CFR 1.1(d)(2), 1.20 and the appendices are not substantial rules, nor do they have an adverse effect on an individual's rights or benefits. In addition, the appendices are not substantially different from the existing departmentwide regulations implementing the Freedom of Information Act and Privacy Act.

The appendices identify particular offices and addresses for the public to contact when making a request under either act, or for service of process, and are applicable to OTS only. The immediate adoption of the appendices is warranted as they are the best means of informing the public of the procedures which should be used to gain access to the records of OTS pursuant to the FOIA and PA. Such rules and regulations are required by FOIA and PA to be published by an agency pursuant to 5 U.S.C. 552(3)(B) and 5 U.S.C. 552a(f).

Accordingly, pursuant to the administrative procedures provisions of 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; and finds good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

As required by Executive Order 12866, it has been determined that this rule does not constitute a ''significant regulatory action.''

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Freedom of information, Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

PART 1—[AMENDED]

Subpart A—Freedom of Information Act

2. Section 1.1 is amended by adding paragraph (d)(13) to read as follows:

* * * * *

(d) * * *

(13) The Office of Thrift Supervision.

* * * * *

3. Appendix M of Subpart A is revised to read as follows:

Appendix M—Office of Thrift Supervision

1. *In general.* This appendix applies to the Office of Thrift Supervision. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: Description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; final adjudications of cases; instructions to staff that affect a member of the public; filings under the Security Exchange Act of 1934; consent agreements in enforcement matters; pleadings, opinions and decisions in administrative adjudications; Regulatory and Thrift Bulletins; Chief Counsel Opinions, substantive rules and statements of general policy and interpretations adopted by the agency, and each amendment, revisions, or repeal of the foregoing, including those which have not been published in the **Federal Register;** draft rules and comment letters, and final Orders of the Director. Office of Thrift Supervision (OTS) regulatory handbooks and other publications are available for sale. Information may be obtained by calling the OTS Order Department at (301) 645–6264. OTS regulatory handbook and other publications may be purchased by forwarding a request, along with a check to: OTS Order Department, P.O. Box 753, Waldorf, MD 20604 or by calling (301) 645–6264. to pay the VISA or MASTERCARD. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process.

2. *Public reading room.* The public reading room for the Office of Thrift Supervision is maintained at the following location: Public Reading Room, 1700 G Street, NW., Washington, DC 20552.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of Thrift Supervision will be made by the Director, Information Services Division. Requests for records should be addressed to: Freedom of Information Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests may be delivered in person to: Office of Thrift Supervision, Information, Services Division, 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office of Thrift Supervision will be made by the Director, Public Affairs, Office of Thrift Supervision or the delegate of such officer. Appeals made by mail should be addressed to: Freedom of Information Appeal, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Corporate Secretary

of the Office of Thrift Supervision or the delegate of such officer and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

* * * * *

Subpart C—Privacy Act

4. Section 1.20 is amended by adding paragraph (m) to read as follows:

* * * * *

(m) The Office of Thrift Supervision.

* * * * *

5. Subpart C of 31 CFR part 1 is amended by adding Appendix M:

Appendix M—Office of Thrift Supervision

1. *In general.* This appendix applies to the Office of Thrift Supervision. It sets forth specific notification and access procedures with respect to particular systems of records, and identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with whom ''Statement of Disagreement'' may be filed, the officer designated to receive services of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published biennially by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accounting of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office of Thrift Supervision, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. This information is contained in the appropriate system notice in the ''Privacy Act Issuances,'' published biennially by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records should be addressed to: Privacy Act Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

3. *Requests for amendments of records.* Initial determinations under 31 CFR 1.27 (a) through (d) with respect to requests to amend records maintained by the Office of Thrift Supervision will be made by the head of the organization or unit having immediate custody of the records or the delegates of such official. Requests for amendment of records should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send these requests should be addressed to: Privacy Act Amendment Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Privacy Act Amendment Requests may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determination under 31 CFR 1.27(e) with respect to records of the Office of Thrift Supervision, including extensions of time on appeal, will be made by the Director, Public Affairs, Office of Thrift Supervision, or the delegate of such official, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made by mail should be addressed as indicated in the letter of initial decision or to: Privacy Act Amendment Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

5. *Statements of Disagreement.* ''Statements of Disagreement'' as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or the delegate of such official and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

7. *Annual notice of systems of record.* The annual notice of systems of records required to be published by the Office of the Federal Register is included in the publication entitled ''Privacy Act Issuances,'' as specified in 5 U.S.C. 552a(f). Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and (8) below, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Office of Thrift Supervision on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single official document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses. Alternatively, an individual may provide a statement that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses which is subscribed by the individual as true and correct under penalty of perjury pursuant to 28 U.S.C. 1746. Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

* * * * *

Dated: May 16, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 95–14807 Filed 6–15–95; 8:45 am]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5222–1]

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Acetone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises the definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for the Federal implementation plan for the Chicago ozone nonattainment area. This action adds acetone to the list of compounds excluded from the definition of VOC on the basis that these compounds have been determined to have negligible photochemical reactivity.

EFFECTIVE DATE: This rule is effective June 16, 1995.

ADDRESSES: This action is subject to the procedural requirements of section 307(d)(1)(B), (J), and (U) of the Act, and 42 U.S.C. 7607(d)(1)(B), (J), and (U). Therefore, EPA has established a public docket for this action, A–94–26, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245.

SUPPLEMENTARY INFORMATION:

I. Background

Three petitions were received by the EPA asking that acetone be added to the list of negligibly-reactive compounds in the definition of VOC at 40 CFR 51.100(s). These petitions were submitted by Eastman Chemical Company and Hoechst Celanese Corporation on April 26, 1993; Hickory Springs Manufacturing Company on May 6, 1993; and the Chemical Manufacturers Association on May 14, 1993. Along with their petitions and in supplemental submissions, these organizations submitted a variety of scientific materials which support the assertion that acetone is of negligible photochemical reactivity. These materials have been added to the docket for this rulemaking. The petitioners based their request for the exclusion of acetone on a demonstration that the photochemical reactivity of acetone is not appreciably different from that of ethane, which is the most reactive compound on the current list of compounds which are named in the definition of VOC as being of negligible reactivity.

The petitioners point out that if acetone is accepted as having negligible photochemical reactivity, exempting acetone from regulation as an ozone precursor could contribute to the achievement of several important environmental goals and would support EPA's pollution prevention efforts. For example, acetone can be used as a substitute for several compounds that are listed as hazardous air pollutants (HAP) under section 112 of the Act. Methylene chloride and methyl chloroform are HAP that are used for metal cleaning and for flexible polyurethane foam blowing. Other HAP, such as toluene, are often used as solvents in paints and coatings. Acetone can substitute for these substances in some circumstances.

Acetone can also be used as a substitute for ozone depleting substances (ODS) which are active in depleting the stratospheric ozone layer. Allowing wider use of acetone will facilitate the transition away from ODS without adversely affecting efforts to control ground level ozone concentrations. For example, chlorofluorocarbon-11 (CFC–11) and methyl chloroform have been used as foam-blowing agents in the manufacture of polyurethane foam. These compounds are also used in metal cleaning in the aircraft manufacturing industry. Both CFC–11 and methyl chloroform are listed as Class I substances under title VI of the Act, i.e., as substances that have the highest stratospheric ozone-depleting potential. Acetone may be able to be used as a foam-blowing agent and cleaning agent in place of these chemicals.

The EPA has already listed acetone as an acceptable ozone-depleting substance substitute for certain uses under the program known as the Significant New Alternatives Policy (SNAP) program (59 FR 13044, March 18, 1994). Within the context of the SNAP rule, substitutes are ''acceptable'' if they are technically feasible to be used as an alternative to an ODS for particular uses and provide a reduced overall risk to human health and the environment compared to the ODS they replace. In the SNAP rule, EPA listed acetone as an acceptable substitute for flexible polyurethane foam blowing (59 FR 13132). The SNAP rule lists ketones (which include acetone) as an acceptable substitute for solvent cleaning in metal cleaning, electronics cleaning, and precision cleaning (59 FR 13134). Ketones are also listed in the SNAP rule as an acceptable substitute solvent for aerosols and for adhesives, coatings, and inks (59 FR 13145).

Based on a review of the scientific material submitted by the petitioners, EPA published a notice in the **Federal Register** on September 30, 1994 (59 FR 49877) which proposed to revise EPA's definition of VOC to add acetone to the list of compounds which are considered to be negligibly photochemically reactive. In the proposal, EPA summarized the technical basis for its preliminary decision to add acetone to this list. This notice asked for comments from the public on the proposal and provided a 60-day comment period which ended November 29, 1994.

II. Comments on Proposal and EPA Responses

In accordance with section 307(d) of the Act, today's action is accompanied by a response to the significant comments, criticisms, and new data submitted in written or oral presentations during the public comment period. During the comment period, written comments were received from 52 individuals or organizations (including several manufacturing companies, seven trade associations, two States and a local air pollution agency) in response to EPA's September 30, 1994 proposal. Copies of these comments are located in the docket (A–94–26) for this action. Significant comments and EPA's responses are summarized below. In the proposal for today's action, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (see section 307(d)(5)(ii) of the Act). During the comment period, one company requested a public hearing, but later withdrew its request. Since no one else requested a hearing, none was held.

About 80 percent of the letters received during the comment period were in favor of the proposal. These comments listed a variety of benefits that would result if acetone is deregulated for industrial use. Other substantial comments and EPA's responses are listed below.

Comment: Several commenters pointed out that removal of restrictions on use of acetone would have a detrimental effect on companies which have invested in research efforts to develop low solvent processes. As an example, some companies have developed low solvent cleaners which reduce the amount of VOC emitted into the air when used. Another example is processes for manufacture of polyurethane foam which do not rely on organic solvent blowing agents. Manufacturers have developed these low polluting processes for making polyurethane foam in order to avoid emission limitations on methylene chloride, methyl chloroform and other regulated organic compounds. Such low emitting polyurethane foam manufacturing processing may not be able to compete effectively if acetone is allowed unrestricted use as a foam-blowing agent. The companies that have developed these low-polluting processes say that they relied on past EPA policy which restricted emissions of acetone as a VOC when deciding to make a financial commitment to develop the processes or products. They now face loss of their research investments and

future profits if acetone is no longer regarded as a VOC and, therefore, no longer restricted in use.

Response: The EPA recognizes that some companies which have developed low solvent products may find that their products face increased competition when acetone is deregulated. It is true that companies which have spent funds in developing these products may not gain the expected financial return if these products are not able to compete successfully against acetone. However, these products are not prohibited by this action and may still compete in the market place. The EPA does not think it is good public policy to continue to restrict acetone use as an ozone precursor when current evidence indicates that it is of negligible photochemically reactivity. Acetone is a useful substance and a wide cross section of American industry stands to benefit from removal of restrictions on its use.

Comment: Some commenters assert that the scientific evidence presented in the docket for this action does not support the contention that acetone is of comparable reactivity to ethane, which is already regarded as negligibly photochemically reactive. One commenter, for example, cited a paper written by Dr. William P. L. Carter, who is the author of much of the background material in the docket. The July 1994 paper entitled ''Development of Ozone Reactivity Scales for Volatile Organic Compounds'' was published in the Journal of the Air and Waste Management Association. Table III in this paper gives a list of organic compounds ranked by a maximum incremental reactivity (MIR) scale. This scale shows that ethane has a MIR value of 0.25 while acetone has a value of 0.56. These values are expressed in units of grams of ozone per gram of test compound added. Since the higher value would indicate higher ozone formation potential, the commenter concluded that this is evidence that acetone is more reactive than ethane.

Response: The MIR values of 0.25 for ethane and 0.56 for acetone are also given in Table 4 in ''An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone'' by Dr. Carter, et al., which is included in the docket for this action. This journal article explains that the MIR scale is based on a scenario derived by adjusting the nitrogen oxide (NO_X) emissions in a base case scenario to yield the highest incremental reactivity of the base reactive organic gas (ROG) mixture. Ozone yield for a VOC depends significantly on the conditions within the polluted atmosphere in which it reacts, such as VOC to NO_X ratio, VOC composition, and sunlight intensity. The MIR value presented in these studies relies on a set of conditions adjusted for maximum ozone incremental reactivity.

In addition to calculating this value, Dr. Carter also calculated values for conditions actually occurring in 39 cities in the United States. His calculations showed that the reactivity of acetone, relative to that of ethane, varied widely with conditions, ranging from substantially higher to substantially lower than that of ethane, although the 39-city study indicated that on average acetone is less reactive on a weight basis that ethane for conditions found in these cities. In the face of such variation, Dr. Carter reasonably concluded that his results did not support a higher acetone reactivity relative to that of ethane. After examining these data, EPA continues to believe that, based on currently existing evidence, a ''negligibly reactive'' rating for acetone is justified.

Comment: One commenter stated that general principles of organic photochemistry support the conclusion that acetone will be more reactive that ethane. Two commenters point out that acetone undergoes photolysis to form free radicals which would cause an increase in photochemical reactivity of acetone as compared to ethane.

Response: It has been recognized that acetone, unlike ethane, undergoes photodecomposition, or photolysis, in the atmosphere to form radicals which tend to cause increased rates of ozone formation. Total reactivity of acetone, considering both reactivity rate constant with hydroxyl radicals and photolysis, was the subject of a study (Carter, W.P.L., et al., ''An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone,'' December 10, 1993) which is included in the docket for this action. The findings of this report take into account the potential for acetone to undergo photolysis, and this information has been included in comparisons of acetone with ethane. The 39-city study which is included in this report shows that acetone reactivity is on average lower than that of ethane for the conditions in these cities. This study indicates that situations represented by conditions typically found in these cities do not support the contentions made in the comments. Therefore, although acetone may undergo photolysis, in these conditions, its reactivity is not dissimilar to ethane's.

Comment: One commenter stated that some experimental values reported in ''An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone'' indicate that the incremental photochemical reactivity of acetone is up to 10 times that of ethane.

Response: The referenced data are in Table 2 of that report, ''Summary of Conditions and Results of the Incremental Reactivity and Direct Reactivity Comparison Experiments,'' in the column labeled IR for incremental reactivity. One value of 0.059 is given for acetone and a value of 0.006 for ethane. The units of these values are moles of ozone per mole of test compound added. A mole of acetone weighs almost twice as much as a mole of ethane. If the results are reported on a basis of grams of ozone per gram of test compound added, the difference between the two values is about half the difference indicated above. The EPA has chosen to use the weight basis rather than a mole basis for comparing results since emissions are regulated on a weight basis.

In addition, the report adds that it should be emphasized that since incremental reactivities are dependent on environmental conditions and since it is not practical to duplicate in the chamber all the environmental factors which might affect magnitudes of incremental reactivities, incremental reactivities measured in chamber experiments should not be assumed to be quantitatively the same as incremental reactivities in the atmosphere. According to the report, the latter can only be estimated using computer airshed model calculations. The 39-city study is such a study which predicts that acetone will be less reactive on a weight basis than ethane for most conditions found in these cities. Averages from this 39-city study give a reactivity value (in grams of ozone/gram of VOC) for ethane of 0.166 and for acetone of 0.126. The value for a typical urban mix of reactive organic gases is 1.13. These values are reported in Table 5 of the report.

Comment: One commenter stated that the photochemical reactivity of acetone was as much as 48 percent of the photochemical reactivity of other VOC.

Response: The commenter reported that he derived the value based on calculations he performed using the data in Table 2 of the report referred to in the previous comment. He did not submit the calculation, however. The EPA calculations using these data have not yielded as high a value. It should be noted that, as reported before, the data in Table 2 are in moles of ozone per mole of test compound. The report also compares acetone reactivity with the base ROG mixture on a gram of ozone per gram of test compound basis. Page

71 of the report summarizes this comparison, stating that acetone is no more than 20 percent as reactive as the base ROG mixture in terms of peak ozone, or 15 percent as reactive in terms of integrated ozone.

Comment: A commenter noted that the report ''An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone'' reports laboratory measurements of photochemical reactivities of acetone and ethane in ''side by side'' laboratory experiments in which it was found that the photochemical reactivity was slightly higher for acetone. This commenter went on to complain that when this report studied the photochemical reactivity of acetone in 39 urban areas, the results were based on use of computer models derived from experimental data. This commenter believed that results should be based on direct experimental data and not on computer models which might contain assumptions and uncertainties.

Response: The EPA agrees that direct experimental data are desirable, provided that direct experimental comparison data exist for a variety of ambient conditions. Existing data, however, are very limited. Such data, for example, were obtained by Dr. H. Jeffries at the University of North Carolina, in a study referenced in the Carter report. Through a direct ''side by side'' experimental comparison of the reactivities of acetone and ethane, Dr. Jeffries observed no measurable difference in the amount of ozone formed in the acetone and ethane sides of the chamber. These experimental data confirm that, essentially, the difference in reactivity between ethane and acetone is not significant. In regard to the use of computer models to predict ozone formation, this is a common, well justified practice in reactivity work, and EPA sees no reason to doubt the approach taken in this analysis.

Comment: One commenter states that the Derwent and Jenkins study shows that acetone produces 12 percent more ozone that does ethane.

Response: Dr. R.G. Derwent reported to EPA, in a January 27, 1994 letter which is contained in the docket, that a comparison of the photochemical ozone creation potential (POCP) for ethane and acetone gives 8.2±4.0 for ethane and 9.2±2.0 for acetone. The commenter is apparently referring to the difference between 8.2 and 9.2, which is 12 percent. The commenter does not appear to consider the measure of variability of the data, expressed as a standard deviation for each number. The difference between these numbers is not considered to be statistically significant, considering the standard deviation of each value.

Comment: One commenter said that EPA has previously stated that ''* * * EPA has found that almost all non-methane VOC are photochemically reactive and that low reactivity VOC eventually form as much ozone as highly reactive VOC,'' 40 CFR Subpart 51 (Appendix S, Section IV(C)(4)). Another commenter said that because acetone is not nonreactive, excluding acetone from the definition of VOC would reduce the ability of States to attain the national ambient air quality standard for ozone in a timely manner.

Response: The CFR section quoted above is part of a discussion of credit for VOC substitution. The above quote is followed by the statement that no emission credit may be allowed for replacing one VOC with another of lesser reactivity, except for those listed in Table I of the policy statement ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977). In that 1977 policy statement, EPA recognized a class of organic compounds that has been determined to have negligible photochemical reactivity and is not required to be controlled under State implementation plans (SIP). Ethane was one of the four compounds on the negligibly reactive list in the 1977 policy statement. Over the years, several other compounds have been recognized as being negligibly reactive and have been added to the list. This list of negligibly reactive compounds was incorporated into EPA's definition of volatile organic compounds which apears in 40 CFR 51.100(s). Today's action adds acetone to that list.

Comment: Two commenters stated that the docket materials show that the photochemical reactivity of acetone is increased by the presence of NO_X and other VOC. If the proposal to exempt acetone from the VOC list is accepted, the urban areas with the worst pollution would be the areas to suffer most from that decision.

Response: Under high NO_X conditions, the modeling results predict that acetone is slightly more reactive that ethane, though the reactivity on the MIR scale is quite low when compared to the reactivity of the weighted average of all emitted VOC and especially when compared to more reactive solvents such as xylene. Under the type of NO_X conditions occurring in most cities, the modeling results indicate the reactivity of acetone is comparable to or less than that of ethane (Table 5 in the Carter report). The 39 cities examined in the modeling studies exhibit air quality ranging from ozone attainment to extreme nonattainment. The modeling results as a whole do not demonstrate an appreciable difference between acetone and ethane in terms of their respective potential to contribute to tropospheric ozone levels. Modeling results for those 39 cities show that acetone reactivity is on average lower than ethane for the actual conditions existing in them and much lower than for the typical urban mix of reactive organic gases.

Comment: Three commenters were concerned that the proposal stated that when this action is made final, acetone may not be used for emission netting, offsetting, or trading with reactive VOC emissions. Two of these commenters supported acetone being reclassified as negligibly reactive, but were concerned that past emission reduction credits be retained in the future. There are two aspects of concern. First, would permits obtained in the past that are based on netting transactions involving acetone still be valid? Secondly, could acetone reductions that have been made in the past, with the expectation that they would be available for future netting, still be used? The commenters say they could suffer financial damages if they are not allowed to use or sell emission reduction credits for past reductions of acetone.

Response: The EPA is currently developing an open market trading rule which will deal with issues of netting, offsetting, and trading transactions. The EPA is deferring its decision concerning whether credits for acetone, which were banked prior to today's action, may be used in future netting, offsetting or trading transactions with reactive VOC. Because of the potential impact that banked emissions could have on attainment demonstrations and reasonable further progress showings, EPA needs to conduct further discussions with States on this issue.

III. Final Action

The EPA concludes that acetone is not appreciably different from ethane in terms of photochemical reactivity. Today's final action is based upon the material in Docket A–94–26 and EPA's review and consideration of all comments received during the public comment period. As proposed in EPA's September 30, 1994 notice, EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to add acetone to the list of compounds that have been determined to have negligible photochemical reactivity. This will have the effect of excluding acetone as a VOC for ozone control purposes. The revised definition will also apply in the Chicago ozone nonattainment area pursuant to the 40

CFR 52.741(a)(3) definition of volatile organic material or VOC compound. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, after the effective date of this final action, EPA will not enforce measures controlling acetone as part of a federally-approved ozone SIP. In addition, once this proposal is made final, States may not include acetone in their VOC emissions inventories for determining reasonable further progress under the Act (e.g., section 182(b)(1)) and may not take credit for controlling acetone in their ozone control strategies.

This action is effective on the date of publication rather than the more usual date 30 days after publication. There is good cause to choose this earlier effective date; this action relieves a restriction on users of acetone (42 U.S.C. section 553 (d)(1)).

Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. The EPA has determined that this rule is not ''significant'' under the terms of Executive Order 12866 and is, therefore, not subject to Office of Management and Budget (OMB) review. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local and/or tribal government(s) in the aggregate. Since today's action is deregulatory in nature and does not impose any mandate upon any source, the cost of such mandates will not result in estimated annual costs of $100 million or more.

Assuming this rulemaking is subject to section 317 of the Act, the Administrator concludes, weighing the Agency's limited resources and other duties, that it is not practicable to conduct an extensive economic impact assessment of today's action since this rule will relax current regulatory requirements. Accordingly, the Administrator simply notes that any costs of complying with today's action, any inflationary or recessionary effects of the regulation, and any impact on the competitive standing of small businesses, on consumer costs, or on energy use, will be less than or at least not more than the impact that existed before today's action.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 7, 1995.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1), and 7620.

2. Section 51.100 is amended by revising paragraph (s)(1) introductory text to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC 142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; and perfluorocarbon compounds which fall into these classes:

* * * * *

[FR Doc. 95–14804 Filed 6–15–95; 8:45 am]

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40 CFR Part 70

[AD–FRL–5221–9]

Clean Air Act Final Interim Approval of Operating Permits Program; Minnesota Pollution Control Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the Minnesota Pollution Control Agency (MPCA) for purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: July 17, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Permits and Grants Section (AE–17J), EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by

the end of an interim program, the Agency must establish and implement a Federal program.

On September 13, 1994, EPA proposed interim approval of the operating permits program for the MPCA. See 59 FR 46948. The EPA received public comment on the proposal and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for the MPCA.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The EPA received comments on a total of 9 topics from 9 organizations. The EPA's response to these comments is summarized in this section. Comments supporting EPA's proposal are not addressed in this notice; however, EPA's TSD responding to all comments is available in the docket at the address noted in the **ADDRESSES** section above.

1. Criminal Enforcement Authority

EPA proposed as a condition for full approval of the Minnesota permit program the removal of Subdivision 14 of Section 609.671 of the Minnesota Criminal Code (Subdivision 14). Subdivision 14 provides that ''*except for intentional violations*, a person is not guilty of a crime * * * if the person notified the pollution control agency of the violation as soon as the person discovered the violation and took steps to promptly remedy the violation.'' (Emphasis added.) EPA has subsequently determined that the definition of ''intentional'' used by the State of Minnesota in the context of this defense is equivalent to the definition of ''knowledge.'' Therefore, EPA no longer requires that Minnesota remove Subdivision 14 for full approval of the Minnesota permit program.

Specifically, a letter dated April 21, 1995, from Hubert H. Humphrey III, Attorney General for the State of Minnesota, to Valdas Adamkus, Regional Administrator of Region 5, EPA, clarifies the definition of ''intentional'' as follows:

> ''Intentional violations'' do not mean the state must show a violation was committed with specific intent. *See State* v. *Orsello,* 1995 WL 141748 (Minn. Ct. App.) * * *. ''Intentional violations'' require only the same type of intent as is required for a general intent crime in Minnesota; namely, an intent to do the act prohibited by the statute. The phrase ''intentional violations'' in this context is thus used to distinguish criminal conduct from the accidental. *See State* v. *Lindahl,* 309 N.W.2d 763, 767 (Minn. 1981) * * *.

EPA had proposed the removal of Subdivision 14 as a condition for full approval of the Minnesota permit program because 40 CFR 70.11(a)(ii) requires that a state have the authority to seek criminal remedies, including, among other things, fines against ''any person who knowingly violates any applicable requirement * * *.'' With the clarification of the definition of ''intentional'' by Minnesota, it is clear that Minnesota does have the authority to seek criminal remedies for knowing violations. Further, this clarification of the definition of ''intentional'' also satisfies EPA's other concern that Subdivision 14 required the State to meet a higher degree of proof than that required by the Clean Air Act. 40 CFR 70.11(b).

2. Monitoring Reports

EPA received one comment from the MPCA on its proposal to require Minnesota to revise Minnesota Rules 7007.0800, subpart 6, to require submittal of semi-annual monitoring reports from all part 70 sources. EPA based its proposal on 40 CFR 70.6(a)(3)(iii)(A), which requires the ''submittal of reports of required monitoring at least every 6 months.'' MPCA believes that it is reasonable to interpret this provision to only require a report if there is required monitoring during the 6 month period. Furthermore, MPCA asserts that ''it would be pointless and wasteful for a part 70 source to be required to submit a semi-annual report when there is nothing to report.''

While EPA agrees with this comment, a revision to this rule is still necessary for full program approval. Minnesota Rules 7007.0800, subpart 6(B), requires submittal of reports at least every six months for ''any stationary source that is required to monitor * * * *more frequently than every six months.*'' (Emphasis added.) Part 70 requires semi-annual reports from sources required to monitor every 6 months. In addition, it is not clear from this provision that a source required to monitor less frequently than every six months is ever required to submit a monitoring report. Therefore, to receive full program approval, MPCA must revise Minnesota Rules 7007.0800, subpart 6 to require at least a semi-annual monitoring report from sources required to monitor at least every 6 months, and to require annual reports from sources required to monitor less frequently than every 6 months.

3. Administrative Permit Amendment Procedures

EPA received 2 adverse comments regarding EPA's proposal to require MPCA to revise Minnesota Rules 7007.1400. This rule allows the use of the administrative amendment procedures to ''clarify'' a permit term. In the proposal, EPA states this ambiguous provision may result in the implementation of permit modifications through the administrative amendment procedures, rather than through the permit modification procedures, in contravention of 40 CFR 70.7 (d) and (e). Because this provision is inconsistent with the requirements of 40 CFR 70.7(d), Minnesota must revise this rule for full program approval.

The American Forest & Paper Association (American Forest) and the National Environmental Development Association (NEDA) are concerned that the ''removal'' of this provision will require MPCA, as a condition for full approval, ''to disapprove environmentally insignificant permitting modifications that otherwise should be approvable through the administrative amendments.'' These commenters also feel that EPA's concerns are ''unwarranted, since EPA would retain, under its proposed rule changes, an adequate opportunity to object to administrative amendments.'' According to 40 CFR 70.1(c), EPA will approve State programs ''to the extent that they are not inconsistent with the Act and these regulations.'' Section 70.7(d) sets forth those matters that may be corrected through administrative permit amendments. Section 70.7(e) sets forth the criteria for permit modifications. Because a broad interpretation of Minnesota Rules 7007.1400 would allow permit modifications to be implemented as administrative permit amendments, the rule expands the scope of those matters which may be corrected pursuant to 40 CFR 70.7(d), in contravention of the Act and part 70 regulations. Therefore, the ambiguity in the rule must be clarified. With respect to EPA's ability to object to administrative amendments, the current part 70 regulations do not provide for EPA review and objection.

4. Incorporation by Reference

EPA proposed as a condition for full approval of MPCA's program that Minnesota Rules 7007.0800, subpart 16 be revised to require that all conditions required by section 70.6(a) contained in that subpart be expressly stated in the part 70 permits. EPA received one comment from MPCA opposing this change. MPCA argues that the inclusion

of this language is not necessary and would draw attention away from the specific requirements that the source must comply with on a day-to-day basis. MPCA feels that inclusion of this language could lead to ''confusion'' at the source as to what conditions actually apply. Finally, MPCA is concerned that EPA intends to require the State to include provisions of 70.6(a) that would not apply to all part 70 sources, such as the provisions at 70.6(a)(4) which would apply only to acid rain sources, in all part 70 permits.

EPA's September 13, 1994, proposal only requires the State to expressly state in every permit those provisions of section 70.6(a) which are found in Minnesota Rules 7007.0800, subpart 16. Specifically, these are the provisions of sections 70.6(a) (5) and (6), which are found in 7007.0800, subpart 16 (A)–(F) of Minnesota's rules. These general provisions apply to all part 70 sources. Therefore, the State's concern that it would be required to include permit terms that do not apply to certain sources in the sources' part 70 permit is unwarranted. Further, EPA fails to see how the express statement of general requirements applicable to all permittees will result in confusion. In fact, it is EPA's position that the express statement of all applicable permit conditions in the permit assists the source in understanding all permit requirements, assures the enforceability of the permit, and is not burdensome.

The State's plan to incorporate by reference general permit conditions may actually hamper the enforceability of those conditions. Because EPA will not incorporate Minnesota's rules by reference for part 70 program approvals, only the part 70 permit, and not the actual rules, would be federally enforceable. Therefore, EPA would only be able to enforce those conditions that are expressly stated in the permit. Further, EPA is concerned that the failure to clearly state permit conditions precludes ''fair warning'' of the permit requirements, and could be the basis for a dismissal.

5. Fees

In the September 13, 1994, notice, EPA proposed to require the State of Minnesota to ''revise the definition of regulated pollutant at Minnesota Rules 7002.0035 to include 'any regulated pollutant for presumptive fee calculation' as defined at 40 CFR 70.2, or submit a detailed fee demonstration.'' One comment was received from the MPCA. MPCA agrees that the fee rule does not collect the presumptive minimum; however, MPCA pointed out that the presumptive minimum can be met without charging for all ''regulated pollutants'' under the Federal definition. EPA agrees with MPCA. 40 CFR 70.9(b)(2) only requires the collection of an amount equivalent to $25 + consumer price index per ton of ''regulated pollutant for presumptive fee calculation,'' to meet the presumptive minimum. Therefore, this requirement will be revised to reflect this comment.

6. Timelines for Permit Issuance

EPA received one comment from MPCA on the proposal to require MPCA to change its deadline for permit issuance on minor and moderate permit amendments from 180 days to 90 days after receipt of an application. In the proposal EPA stated that both types of permit amendments seemed to fall under the minor modification procedures of part 70, which requires final action within 90 days after receipt of an application. MPCA argues that 40 CFR 70.7(e)(1) allows States to ''develop different procedures for different types of modifications depending on the significance and complexity of the requested modification'' provided that the procedures do not provide for less permitting authority or review by EPA and affected States, and that this is what it has done by creating minor and moderate permit amendment categories. In addition, MPCA argues that by increasing the review time from 90 days to 180 days, the State has increased the likelihood of meaningful State and Federal review of permit applications.

According to 40 CFR 70.7(e)(1), a State must ''provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications.'' The State may meet this requirement by adopting the procedures set forth in 40 CFR 70.7(e), or procedures that are ''substantially equivalent.'' EPA does not consider the State's minor permit amendments to be substantially equivalent to the minor modification procedures of part 70 because of the timeline for acting on minor permit amendment applications. Although additional time might allow the State to have a more meaningful review, it would also allow a source that had applied for a minor permit amendment, but did not qualify for a minor permit amendment, an extra 90 days of operation before submitting the proper application. For this reason, EPA is requiring MPCA to take action on minor permit amendments within 90 days of receipt of a complete application.

Part 70 does allow a State to develop additional procedures for different types of modifications as long as the procedures do not provide for less permitting authority, EPA or affected State review, or public participation, than is provided for in part 70. Minnesota has done this with its moderate permit amendment procedures. MPCA has allowed 180 days to take final action on moderate permit amendment applications; however, the source is not allowed to operate under that change until the State has approved the change. Therefore, EPA has decided that this type of change does meet all requirements of part 70, and EPA will not require a change with respect to moderate permit amendments as proposed in the September 13, 1994 notice.

7. Section 112(g) of the Clean Air Act

In its proposed approval of Minnesota's part 70 program, EPA also proposed to approve Minnesota's preconstruction review program for the purpose of implementing section 112(g) during the transition period before a Federal rule had been promulgated implementing that section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Minnesota must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Minnesota's preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption

by Minnesota of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The EPA is limiting the duration of this proposal to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Minnesota currently lacks a program designed specifically to implement section 112(g), Minnesota's preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Minnesota to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit. Minnesota should be able to impose federally enforceable measures reflecting MACT for most if not all changes qualifying as a modification, construction, or reconstruction under section 112(g). This is because most section 112(b) HAPs are also criteria pollutants, and moreover because measures designed to limit criteria pollutant emissions will often have the incidental effect of limiting non-criteria pollutant HAPs.

Another consequence of the fact that Minnesota lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in the section 112(g) rule. However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes during any transition period will be determined according to the final section 112(g) rule. The EPA would expect Minnesota to be able to issue a preconstruction permit containing a case-by-case determination of MACT where necessary for purposes of section 112(g) even if review under its own preconstruction review program would not be triggered.

8. Title I Modifications

For the reasons set forth in EPA's proposed rulemaking to revise the interim approval criteria of 40 CFR part 70 (59 FR 44572, August 29, 1994), the EPA believes the phrase ''modification under any provisions of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) is best interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Act. The definition of ''title I modification'' at Minnesota Rules 7007.0100, subpart 26, includes ''any change that constitutes a modification under any provision of title I of the act * * '' In addition, Commissioner Charles Williams states in a letter dated April 19, 1994, that MPCA does consider ''modifications of limits promulgated in the SIP and SIP required permit amendments'' to be title I modifications. Therefore, in the September 13, 1994, proposal, EPA states that in light of the clarification in the April 19, 1994, letter, Minnesota's definition would be consistent with any definition of title I modification that EPA may adopt.

EPA received 3 comments on the definition of title I modifications. American Forest and NEDA asserted that neither MPCA nor EPA has the authority to include changes made pursuant to a preconstruction permitting program approved into the SIP as title I modifications. American Forest also asserted that Minnesota has no legal authority to fund its preconstruction permitting program from title V fees. MPCA commented that it does not consider SIP required permit amendments to be title I modifications, as was stated in the April 19, 1994, letter.

Although MPCA's interpretation of title I modification does not conform with EPA's current interpretation, EPA will take no action on Minnesota's program at this time with respect to the definition of title I modification. EPA is not taking action at this time because the definition of title I modification and the criterion for approving part 70 programs with respect to this issue are still being debated. For further explanation, please refer to the TSD or to the Final Interim Approval of the Operating Permit Program for the State of Washington (59 FR 55813).

9. Section 112(l)

In the September 13, 1994 notice, EPA proposed to grant approval under section 112(l)(5) and 40 CFR 63.91 of Minnesota's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. In addition, EPA noted that Minnesota intended to accept delegation of section 112 standards through automatic delegation. However, in its comments on the September 13, 1994 notice, MPCA stated that it has not requested delegation to implement section 112 standards, and that it does not intend to request delegation at this time. Therefore, EPA is not approving a mechanism for delegation of section 112 standards at this time. If MPCA does request delegation of section 112 standards in the future, EPA will approve a mechanism for delegation of the 112 standards in a separate rulemaking.

The fact that EPA is not approving a mechanism for delegation of section 112 standards does not affect the approvability of Minnesota's Operating Permits Program. Title V requires a State to be able to incorporate these terms into a permit and to be able to enforce the terms of that permit. Minnesota's program does meet those requirements.

B. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by MPCA on November 15, 1993. The State must make the following changes to receive full approval:

1. Revise Minnesota Rules 7007.0800, subpart 6(B) to require at least semi-annual monitoring reports from any source required to monitor at least every six months, and to require any source required to monitor less frequently than every six months to submit at least an annual monitoring report.

2. Revise Minnesota Rules 7007.1400 to be consistent with the requirements of 40 CFR 70.7(d). Minnesota Rules 7007.1400 provides that the administrative amendment procedure may be used to ''clarify a permit term.'' This ambiguous provision is not consistent with the requirements of 40 CFR 70.7(d) and could be interpreted broadly enough to allow changes to a permit which should be handled through the permit modification procedures.

3. Revise Minnesota Rules 7007.0800, subpart 16, to require that the permit terms included in 40 CFR 70.6(a) that are included in this subpart be expressly stated in part 70 permits. Minnesota Rules 7007.0800, subpart 16, allows permit terms which are required by 40 CFR 70.6(a) to be include in the permit by reference to the State regulation. Failure to have these provisions expressly stated in the permit may create difficulties in enforcing those terms and may make it difficult for citizens to understand what provisions apply to a source.

4. Revise Minnesota Rules 7002 in such a way that the State will collect an amount equivalent to the presumptive minimum, or submit a detailed fee

demonstration containing all required elements under 40 CFR 70.9.

5. Revise Minnesota Rules 7007.0750, subpart 2.C, to require the permitting authority to take action on minor permit amendments within 90 days of receipt of a complete application.

This interim approval, which may not be renewed, extends until July 16, 1997. During this interim approval period, the State is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

EPA is granting Source Category-Limited (SCL) interim approval to Minnesota's program. Although the State is required to issue permits within 3 years to all sources subject to the program that obtains interim approval, some sources will not be subject to the requirement to obtain a permit until full approval is granted. Part 70 sources which are not addressed until full approval are also subject to the 3-year time period for processing initial permit applications. The 3-year period for these sources will begin on the date full approval of the State's program is granted. Therefore, initial permitting of all part 70 sources might not be completed until 5 years after interim approval is granted.

If the State fails to submit a complete corrective program for full approval by January 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If the State then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, six months after application of the first sanction, the State still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the State program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State upon interim approval expiration.

The EPA is also promulgating approval of Minnesota's preconstruction permitting program found in Minnesota Rules Chapter 7007, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) regulations. The EPA believes this approval is necessary so that Minnesota has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Minnesota adequate time for the State to adopt regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including 9 public comments received and reviewed by EPA on the proposal, are contained in the docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: June 1, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding the entry for Minnesota in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Minnesota

(a) Minnesota Pollution Control Agency; submitted on November 15, 1993; effective July 17, 1995; interim approval expires July 16, 1997.

[FR Doc. 95–14684 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5222–8]

Oregon; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Oregon has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Oregon's application and has made a decision, subject to public review and comment, that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Oregon's hazardous waste program revisions. Oregon's application for program revision is available for public review and comment.

DATES: Final authorization for Oregon shall be effective August 15, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Oregon's program revision application must be received by the close of business July 17, 1995.

ADDRESSES: Copies of Oregon's program revision application are available Monday through Friday, 8 a.m. to 5 p.m., at the following addresses for inspection and copying: Oregon Department of Environmental Quality, Executive Building, 811 SW. Sixth Avenue, Portland, OR 97204; phone: (503) 229–5072; U.S. EPA Region 10, Library, 10th Floor, 1200 Sixth Avenue, Seattle, WA 98101; phone: (206) 553–4763. Written comments should be sent to Michael Le, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail Stop HW–107, Seattle, WA 98101; phone: (206) 553–1099.

FOR FURTHER INFORMATION CONTACT: Michael Le, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail Stop HW–107, Seattle, WA 98101; phone: (206) 553–1099.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124 and 270.

B. Oregon

Effective on January 31, 1986, Oregon received final authorization for the base program. Today, Oregon is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Oregon's application, and has made an immediate final decision that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Oregon. The public may submit written comments on EPA's immediate final decision up until July 17, 1995. Copies of Oregon's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Oregon's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Oregon's revision application includes those RCRA federal provisions promulgated on September 19, 1994 and January 3, 1995. These regulations pertain to Land Disposal Restrictions Phase II—Universal Treatment Standards for Organic Toxicity characteristic Wastes and Newly Listed Wastes. Oregon Environmental Quality Commission incorporated by reference these federal regulations. Accordingly, the State rules (Oregon Administrative Rule, OAR 340–100–002(1)) are equivalent to the federal regulations and became effective in the State of Oregon on May 18, 1995.

This program revision will not authorize the State to operate the RCRA program over any Indian lands; this authority remains with EPA.

C. Decision

I conclude that Oregon's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oregon is granted final authorization to operate its hazardous waste program as revised.

Oregon now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oregon also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Oregon's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 5, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–14806 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

OPPTS–400086A; FRL–4952–7]

Acetone; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting a petition to delete acetone from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). This deletion is based on a determination that acetone meets the delisting criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of acetone that occurred during the 1994 calendar year and releases that will occur in the future. This relief applies only to the reporting requirements under section 313 of EPCRA.

DATES: This rule is effective June 16, 1995.

FOR FURTHER INFORMATION CONTACT: For specific information on this final rule: Maria J. Doa, Petitions Coordinator, Telephone: 202–260–9592. For more information on EPCRA section 313: Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, In Virginia and Alaska, 703–412–9877 or Toll free TTD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This final rule is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added chemicals to and deleted chemicals from the original statutory list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61439, November 30, 1994).

II. Description of Petition and Regulatory History

On September 24, 1991, EPA received a petition from Eastman Chemical Company and Hoechst Celanese to delete acetone from the EPCRA section 313 list of toxic chemicals. The petitioners contend that acetone should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria and because acetone's low photochemical reactivity does not present substantial concerns for formation of tropospheric ozone or other air pollutants.

On September 30, 1994, following a review which consisted of a toxicity evaluation and an exposure analysis, EPA proposed to grant the petition to delete acetone from the section 313 list by issuing a proposed rule in the **Federal Register** (59 FR 49888). The proposal to grant the petition was based upon EPA's finding that acetone did not meet the listing criteria found in section 313(d)(2) of EPCRA. It was EPA's belief that there was insufficient evidence to demonstrate that acetone causes or can reasonably be anticipated to cause significant adverse human health or environmental effects.

Until this time, acetone has been considered to be a Volatile Organic Compound (VOC). Emissions of VOCs are managed under regulations (40 CFR parts 51 and 52) that implement Title I of the Clean Air Act (CAA), as amended, 42 U.S.C. 7401 *et seq*. EPA's definition of VOCs excludes certain listed chemicals that have been determined to be negligibly photochemically reactive (57 FR 3941, February 3, 1992). Elsewhere in this issue of the **Federal Register**, EPA is finalizing its addition of acetone to the list of compounds excluded from the definition of a VOC based on the determination that acetone has a negligible contribution to tropospheric ozone formation.

III. Final Rule and Rationale for Delisting

A. Comments on the Proposed Deletion of Acetone

The public comment period for the proposed rule closed on November 29, 1994. EPA received 51 comments on the proposed rule to delete acetone. Of these, 29 comments concurred with the proposal, and 22 comments objected to the proposal.

The Chemical Manufacturers Association objected to the statement in the proposed rule that all VOCs ''meet the criteria for listing under EPCRA section 313.''

In the proposed rule, EPA did not state that all VOCs meet the criteria for listing under EPCRA section 313 solely by virtue of their being so designated. However, EPA reaffirms its position as stated in the proposed rule, that chemicals that clearly fit the definition of VOC under the CAA meet the listing criteria of EPCRA section 313. VOCs contribute to the formation of tropospheric ozone. Ozone can reasonably be anticipated to cause significant adverse effects on human health and the environment, and therefore meets the listing criteria of EPCRA section 313.

Artco Inc. and National Marine Manufacturers Association comment that EPA should further research other chemicals which are not depleting the stratospheric ozone layer and promulgate their removal as well. EPA does not believe that the removal of chemicals from the EPCRA section 313 list is warranted solely on the basis of whether they deplete the stratospheric ozone layer. In making a determination that a chemical should be deleted from the EPCRA section 313 list, EPA examines whether the chemical meets *any* of the criteria set forth in EPCRA section 313(d)(2). A chemical which is shown not to deplete the stratospheric ozone layer could still meet one of the other criteria, and thus, could not be deleted from the list.

Eastman Chemical Co. and Hoechst Celanese stated that the deletion of acetone will ''improve EPA's TRI program as well as conserve EPA and industry resources.'' Further, Outboard Marine Corp., Hoechst Celanese, and the Savannah River Pulp and Paper Corp. stated that the removal of acetone from the list of EPCRA section 313 toxic chemicals will reduce, in part, the administrative burden on facilities.

As described in the economic analysis, EPA agrees that the deletion of acetone will result in a resource savings by EPA and industry. In addition, EPA agrees that, as a result of this action, there will be a decrease in the administrative burden on facilities who have previously been required to report for acetone under EPCRA section 313.

A number of the commenters who supported the deletion stated that acetone is a substitute for more hazardous air pollutants, and that removing acetone from the list will encourage facilities to use acetone rather than these more hazardous chemicals. Specifically, Eastman Chemical Co. and Hoechst Celanese commented that the proposed rule does not address any of the environmental benefits associated with deleting acetone from the section 313 list. These two commenters pointed to the benefits derived from the use of acetone as a substitute for other regulated chemicals.

Although there might be environmental benefits from using acetone rather than some other chemicals, this has no impact on whether acetone meets the listing criteria of EPCRA section 313(d)(2). EPA agrees that, to the extent that the substances being substituted by acetone are more hazardous to human health or the environment than acetone, such substitution would be beneficial.

These two commenters further brought up several technical points, which they felt should have been included in the proposal. Specifically, they believe that a description of drinking water studies which have been conducted with acetone, as well as information on the recently revised oral reference dose (RfD) for acetone, would be a useful addition to the preamble to this final rule. EPA acknowledges that the drinking water studies have been conducted, but does not feel that a description of them is warranted. These studies support the decision to delist acetone. EPA also acknowledges that the RfD has recently been revised. At the time of publication of the proposed rule, the RfD was 0.1 milligram per kilogram per day (mg/kg/day). EPA has revised this RfD to 0.9 mg/kg/day. This higher value reflects a slightly lower toxicity and, as stated above, supports the delisting decision.

A number of the commenters that oppose the delisting stated that there are substantial data to support a concern for health effects from acetone, and that EPA's review of evidence of toxicity for acetone must address the serious concerns raised by the Agency for Toxic Substances and Disease Registry (ATSDR) in its *Draft Toxicological Profile for Acetone*. In addition, as some commenters have pointed out, there are insufficient data to assess the toxicity of acetone.

As reviewed by the ATSDR, there has been considerable research on the health effects of acetone. However, most of this research has involved acute or subchronic exposure to relatively moderate and high levels of acetone. There is a lack of information with which to firmly characterize the critical effects of low-level exposure to acetone. Under EPCRA section 313, a lack of evidence cannot be used as a basis for listing a chemical. The known toxicity levels for acetone fall in the range which can be considered to be moderately low to low, and the decision must be based on the weight-of-the-evidence available.

EPA has reviewed the ATSDR draft profile as well as other relevant materials and has concluded that there is not sufficient evidence of toxicity to retain acetone on the EPCRA section 313 list. According to the ATSDR, based on a lowest observed adverse effect level (LOAEL) of 1,250 parts per million (ppm) for (transient) neurological effects over a 6-week period, intermediate and chronic inhalation Minimal Risk Levels (MRLs) of 13 ppm were calculated. Furthermore, the ATSDR indicates that levels of acetone which are normally found in outdoor air are generally significantly lower than this, at less than 8 parts per billion (ppb), and also generally lower than the air concentrations of acetone inside homes. At this time, there is insufficient evidence regarding chronic or subchronic exposure to such low levels of acetone to warrant listing (Ref. 1).

Several commenters recommended that EPA require industry to fully test acetone for toxicity under the criteria of section 4 of the Toxic Substances Control Act (TSCA), stating that testing should be performed before acetone is removed from the public's right-to-know. Other commenters, noting that EPA is currently negotiating with industrial users of acetone for neurotoxicity testing of the chemical, claimed that the proposal for delisting is ill-timed and inappropriate.

At this time, the Agency has already entered into an Enforceable Consent Agreement with industry, requiring subchronic testing of acetone for neurotoxicity. At concentrations to which workers may be exposed in the workplace, which are much higher than those in outdoor air, central nervous system (CNS) effects such as narcosis, headache, and changes in operant behavior do appear to be relevant concerns indicative of neurotoxicity. However, the criteria for requiring neurotoxicity testing under TSCA section 4 and the criteria for inclusion in section 313 of EPCRA are very different. At this point in time, the weight-of-the-evidence is not sufficient to show that acetone meets the EPCRA section 313(d)(2) criteria for listing. EPA cannot deny a petition under EPCRA section 313 based on the fact that testing is going to be performed to fill data gaps.

A number of commenters stated that EPA should consider the synergistic effects of acetone together with other chemicals and stated that exposure to acetone is well known to increase the toxicity of many other chemicals. Commenters stated that the increased toxicity of other compounds in combination with exposure to acetone, as detailed in the ATSDR draft profile, justifies maintaining the EPCRA section 313 listing of acetone.

The ATSDR draft profile does provide a detailed review of the interaction of acetone and other chemicals. This report indicates that acetone may alter the effect of other chemicals by either increasing, decreasing, having a mixed effect on or having no effect on their toxicity. For example, carbon tetrachloride, halogenated alkanes, ethanol, and some ketones were more toxic when co-administered with acetone. However, acetone had mixed effects on the toxicity of other chemicals (dichlorobenzene, chlorinated alkanes, possibly halogenated alkanes, nitrosoamine, and acetonitrile) either at varying doses or for different toxicity endpoints. Furthermore, acetone had no reported effect on styrene or methyl ethyl ketone, and actually reduced the toxicities of acetaminophen and semicarbazide (Ref. 1).

As with the toxicity of acetone alone, the doses of acetone required for these interactive effects far exceed the concentrations of acetone which are found in outdoor air. For example, the lowest doses for acetone potentiation of toxicity reported by the ATSDR were found with carbon tetrachloride. Liver toxicity of carbon tetrachloride was shown to be potentiated by co-administration of acetone. However, non-effective doses of acetone were as high as 78 milligrams/kilogram (mg/kg)

twice a day for 3 days, or 1,000 ppm over 4 hours (Ref. 1).

Again, the weight-of-the-evidence for the synergistic effects of acetone on the toxicity of other chemicals is not sufficient to show that acetone meets the EPCRA section 313(d)(2) criteria for listing.

Several commenters state that EPA has not considered the effects of acetone on susceptible populations such as children, the elderly, or pregnant women, as detailed in the ATSDR draft profile. EPA disagrees. The ATSDR draft profile reported no human data on acetone in ''more susceptible populations.'' Several studies in rats reported possible sex differences in susceptibility. Other factors which may have affected susceptibility in rats were age and pregnancy; however, no doses were reported.

The National Council of the Paper Industry for Air and Stream Improvement Inc. submitted a review on the *Toxicity of Acetone* in support of delisting acetone. This report concludes that acetone does cause CNS depression and irritation of mucous membranes, but that these effects become apparent only at high concentrations (above 500 ppm for irritation and 1,000 ppm for CNS effects).

This review was not as detailed as the ATSDR *Draft Toxicological Profile for Acetone*; however, reports of effective dose levels were similar. This review provides further indication of the relatively high levels of acetone necessary to induce toxicity or enhance the toxicity of other chemicals.

The Chesapeake Bay Foundation commented that acetone is toxic to aquatic life, and that it has a potential to bioaccumulate, and therefore, it should not be removed from the EPCRA section 313 list of toxic chemicals. The commenter cites toxicity values of 10 milligrams/liter (mg/L) to *Daphnia magna*, and a median lethal concentration (LC_{50}) for the clawed toad of 25 mg/L.

The toxicity values quoted by the commenter are within the range which are considered by EPA to be ''moderately low.'' However, the majority of the available aquatic toxicity (LC_{50}) values for acetone are greater than 100 mg/L. In fact, several studies reported LC_{50} values for *Daphnia magna* of greater than 100 mg/L. Taken as a whole, the data indicate that acetone presents a low level of hazard to aquatic organisms. As to the statement that acetone has the potential to bioaccumulate, EPA disagrees. As stated in the proposed rule, acetone is readily biodegradable in aquatic systems. Its octanol/water coefficient (-0.24) indicates a low potential for bioaccumulation, and its high water solubility indicates that acetone is not likely to biomagnify. The commenter did not supply any data which would lead EPA to change this assessment.

The Maine Greens comment that acetone is a known hazardous substance based on flammability, and the State and Territorial Air Pollution Program Administrators/Association of Local Pollution Control Officials comments that acetone should not be removed from the EPCRA section 313 list of toxic chemicals because delisting a flammable solvent will eliminate information needed by emergency response personnel regarding the true hazard presented by a given facility.

While EPA believes that the data collected under EPCRA section 313 may be of use to local response authorities in developing emergency response plans, it is not the primary focus of EPCRA section 313 as it is with EPCRA sections 302–312. Furthermore, flammability is not one of the criteria for listing a substance under EPCRA section 313.

B. Rationale for Delisting and Conclusions

EPA is granting the petition by deleting acetone from the EPCRA section 313 list. EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(A) because acetone exhibits acute toxicity only at levels that greatly exceed releases and resultant exposures. Specifically, acetone cannot reasonably be anticipated to cause ''* * * significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases.''

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because acetone: (1) Cannot reasonably be anticipated to cause cancer or neurotoxicity and has not been shown to be mutagenic, and (2) cannot reasonably be anticipated to cause adverse developmental effects or other chronic effects except at relatively high dose levels.

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(C) because acetone causes adverse environmental effects only at relatively high dose levels.

Based upon evaluation of the petition, available toxicity and exposure information, and public comment, EPA reaffirms its determination that acetone meets the EPCRA section 313(d)(3) criteria for deletion. Therefore, EPA is finalizing the deletion of acetone from the list of chemicals subject to reporting under section 313 of EPCRA.

This petition does not request that any action be taken under any statutory provision other than EPCRA section 313, and today's rule should not be inferred as an action under any statutory provision other than EPCRA section 313. Each statute prescribes different standards for adding or deleting chemicals or pollutants from its respective list. Specifically, the deletion of acetone from the EPCRA section 313 list does not alter its regulatory status under other statutory provisions. Today's rule is based solely on the criteria in EPCRA section 313.

IV. Effective Date

This action is effective June 16, 1995. Thus the last year in which facilities had to file a Toxic Release Inventory (TRI) report for acetone was 1994, covering releases and other activities that occurred in 1993.

Section 313(d)(4) provides that ''[a]ny revision'' to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date, in these circumstances, is also consistent with 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with acetone, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)–(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 June 28, 1994.

V. Rulemaking Record

The record supporting this rule is contained in the docket number OPPTS–400086A. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VI. References

(1) USEPA, OPPTS, HERD, HEB. Norris, Deborah O., ''Summary of and Response to Health-Related Public Comments on Proposal to Remove Acetone from TRI,'' dated March 14, 1995.

(2) USEPA, OPPTS, EAB. Cinalli, C., ''Exposure Report for Acetone,'' dated April 13, 1994.

(3) USEPA, OPPTS, EAB. Nold, A. and Cinalli, C., ''Addendum to Exposure Report for Acetone,'' dated June 15, 1994.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a ''significant regulatory action'' as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

In accord with Executive Order 12866, EPA has prepared an economic analysis of this final rule. This final rule will reduce the number of reports submitted under EPCRA section 313 by 2,500 per year. EPA estimated that this will yield savings of $7 million per year for industry and EPA. Pursuant to the terms of this Executive Order, EPA has determined that this final rule is not significant and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because this final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This final rule relieves facilities from having to collect information on the use and releases of acetone. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This rule will reduce reporting burden by approximately 131,000 hours per year.''

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 9, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for acetone under paragraph (a) and removing the entire CAS No. entry for 67–64–1 under paragraph (b).

[FR Doc. 95–14805 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 335

[Docket No. 93–026–4]

RIN 0579–AA61

Introduction of Nonindigenous Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule to establish regulations governing the introduction (importation, interstate movement, and release into the environment) of certain nonindigenous organisms. Additionally, we are notifying the public of our intent to publish an advance notice of proposed rulemaking to solicit further public comment regarding what should be proposed in any new proposed rule. We are taking this action after considering the comments on the proposed rule.

DATES: Withdrawal of proposed rule effective June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A01, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–7654.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1995, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (60 FR 5288–5307, Docket No. 93–026–1) to establish regulations governing the introduction (importation, interstate movement, and release into the environment) of certain nonindigenous organisms. In that document, APHIS stated that the proposed rule appeared to be necessary because the plant pest regulations under which the movement of certain nonindigenous organisms are currently regulated do not adequately address the introduction of nonindigenous organisms that may potentially be plant pests. The proposed regulations were intended to provide a means of screening certain nonindigenous organisms prior to their introduction to determine the potential plant pest risk associated with a particular introduction.

We initially solicited comments on the proposed rule for 60 days ending on March 27, 1995. We also hosted three public hearings regarding the proposed rule during that initial comment period, in Kansas City, MO, on March 6, 1995; in Sacramento, CA, on March 7, 1995; and in Washington, DC, on March 10, 1995. We received several requests for an extension of the comment period to allow interested parties additional time to comment on the proposal, as well as a request that we hold a public hearing in Hawaii. In response to those requests, we published a notice in the **Federal Register** on March 21, 1995 (60 FR 14928–14929, Docket No. 93–026–2), that extended the comment period for the proposed rule until May 26, 1995, and announced that a public hearing would be held in Honolulu, HI, on April 6, 1995.

By the close of the extended comment period, we had received a total of 251 comments. The comments were submitted by farmers; weed control committees and districts; university researchers; biological control researchers, producers, distributors, and practitioners; waste treatment and recycling facilities; composters; members of Congress; local, State, and Federal agencies; commercial laboratories; organic farmers and cooperatives; private citizens; a fish hatchery; collections and museums; industry associations; scientific societies; and foreign government agencies.

None of the commenters supported the proposed rule as written. Some commenters requested that the proposed rule be withdrawn and reconsidered, while others recommended that we incorporate changes in any final rule to be published. Many commenters disagreed with the proposed lists of regulated organisms and exempted organisms, or expressed the belief that the proposed rule would impose unnecessary restrictions on the introduction of organisms. Finally, many commenters disagreed with APHIS' analysis of the economic impact of the proposed rule, stating that they believed that the costs of complying with the proposed regulations would be greater than APHIS had anticipated.

After considering all the comments, we have concluded that we should not proceed with a final rule based on the proposal because the revisions that would be necessary to reconcile the proposed regulations with the very diverse views expressed in the comments would be so significant that the final rule would be substantially different from the proposed rule on which the public had the opportunity to comment. Therefore, we are withdrawing the January 26, 1995, proposed rule. We do, however, plan to develop new proposed regulations to address the inadequacies in our current plant pest regulations and to provide a means of screening organisms prior to their introduction to determine the potential plant pest risks associated with such introductions. The concerns and recommendations of all those who commented on the proposed rule that we are withdrawing will be considered during the development of any new proposed regulations. Further, we will publish an advance notice of proposed rulemaking in a future issue of the **Federal Register** to solicit additional input from interested persons and to present opportunities for additional public participation in discussions of the scope, rationale, and basis of any new proposed regulations.

Authority: 7 U.S.C. 150aa–150jj, 151–164a, 167, and 1622(n); 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 9th day of June 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–14815 Filed 6–13–95; 1:45 pm]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–19–AD]

Airworthiness Directives; General Dynamics (Convair) Model 240 Series Airplanes, Including Model T–29 (Military) Airplanes; Model 340 and 440 Series Airplanes; and Model C–131 (Military) Airplanes; Including Those Modified for Turbo-Propeller Power

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 various General Dynamics (Convair) airplanes. This proposal would require revising the Airplane Flight Manual to require that the flight crew limit the flap settings during certain icing conditions and air temperatures. This proposal is prompted by reports indicating that incidents involving uncommanded pitch excursions have occurred due to ice contaminated tailplane stall (ICTS) that occurred during or following flight in icing conditions. If flap settings are increased for landing when ICTS is present, elevator control could be affected adversely and the airplane could descend uncontrollably. The actions specified by the proposed AD are intended to ensure that the flight crew is advised of the potential hazard related to increasing the flap settings when ICTS is present, and the procedures necessary to address it.

DATES: Comments must be received by August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–19–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that incidents involving uncommanded pitch excursions have occurred on various turbo-propeller powered airplanes, including General Dynamics (Convair) airplanes. These pitch excursions were caused by ice contaminated tailplane stall (ICTS), which occurred during or following flight in icing conditions. If the flap settings are increased for landing when ICTS is present, elevator control could be affected adversely. This condition, if not corrected, could result in uncontrollable descent of the airplane.

Icing conditions can be encountered during the approach for the landing phase of flight. Further, ice can accumulate on the tailplane before it begins to accumulate on the wings. Since ice may form quickly, in the case of the tailplane, such ice formation could reach hazardous proportions during the approach phase without any prior evidence of its presence in the ''clean'' (cruise) configuration.

The flight crew can only determine if ice is forming on the airplane by looking out the window at the wings. If the flight crew does not observe any ice on the wings, they could assume that the airplane is free of ice and proceed to select certain flap settings during the approach phase without properly configuring the airplane for icing conditions by turning on the anti-icing system. In addition, the flight crew may increase the flap settings for landing and, consequently, elevator control can be affected adversely.

In response to the reports of uncommanded pitch excursions, the FAA and the National Aeronautics and Space Administration (NASA) sponsored two International Tailplane Icing workshops in November 1991 and April 1993. In addition to representatives from the FAA and NASA, workshop participants included representatives from certain foreign airworthiness authorities, foreign and domestic manufacturers, and industry. As a result of these workshops, emphasis was placed on improving flight crew awareness of ICTS. For the longer term, a review of certain Federal Aviation Regulations (FAR) that pertain to ice protection/detection and tailplane aerodynamic issues also was conducted.

Additionally, the FAA conducted flight tests on various turbo-propeller powered airplanes, including General Dynamics (Convair) Model 5800 series airplanes. (This airplane model is similar to a Model 340 series airplane equipped with turbo-prop engines.) During the certification of Model 5800 series airplanes, the FAA performed a series of flight test maneuvers to determine if the airplane would be susceptible to ICTS. Results of these flight test maneuvers indicate that these airplanes are susceptible to ICTS. Such susceptibility is directly related to the angle-of-attack (AOA) of the tailplane and the sensitivity of the airfoil to degradation by contamination often associated with efficient airfoil design.

The FAA has issued a number of airworthiness directives (AD) to correct the same unsafe condition described previously on various transport category airplane types. Examples of those AD's include the following:

—AD 86–20–02, amendment 39–5429 (51 FR 34452, September 29, 1986), applicable to Aerospatiale Model ATR–42 series airplanes;

—AD 91–16–01, amendment 39–7091 (56 FR 37468, August 7, 1991),

applicable to Mitsubishi Heavy Industries (MHI) Model YS–11 and –11A series airplanes; and

—AD 86–06–03 R1, amendment 39–5917 (53 FR 16385, May 9, 1988), applicable to SAAB-Fairchild Model SF–340A series airplanes.

The FAA finds that the FAA-approved Airplane Flight Manual (AFM) for General Dynamics (Convair) Model 240 series airplanes [including Model T–29 (military) airplanes], Model 340 and 440 series airplanes, and Model C–131 (military) airplanes, including those modified for turbo-propeller power, must be revised. This revision must include procedures to ensure that the flight crew does not select a flap setting of more than 30 degrees after icing conditions have been encountered, when icing conditions are anticipated during approach and landing, or when the outside air temperature is +5 degrees Celsius or below and any visible moisture is present. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

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 revising the Limitations Section of the FAA-approved AFM to limit flap selection during certain icing conditions and air temperatures.

There are approximately 282 Model 240 series airplanes, including Model T–29 (military) airplanes; Model 340 and 440 series airplanes; Model C–131 (military) airplanes, and those models modified for turbo-propeller power; of the affected design in the worldwide fleet. The FAA estimates that 197 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,820, or $60 per airplane.

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

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

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

General Dynamics (Convair): Docket 95–NM–19–AD.

Applicability: All Model 240 series airplanes, including Model T–29 (military) airplanes; Model 340 and 440 series airplanes; and Model C–131 (military) airplanes; including those models modified for turbo-propeller power (commonly referred to as Model 580, 600, and 640 series airplanes); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with increasing the flap settings when ice contaminated tailplane stall (ICTS) is present, and the procedures necessary to address it, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will limit the flap settings during certain icing conditions and air temperatures. This may be accomplished by inserting a copy of this AD in the AFM.

''Flap Limitation in Icing Conditions

Flap selection is limited to a maximum of 30 degrees after icing conditions have been encountered; or when icing conditions are anticipated during approach and landing; or when the outside air temperature is +5 degrees Celsius or below and any visible moisture is present.''

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14766 Filed 6–15–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–50–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas DC–10–10 series airplanes. This proposal would require inspections of the wings to detect cracks in the aft spar lower cap, in certain stringer butterfly clips on the bulkheads, and in certain fastener holes; and repair, if necessary. This proposal would also require modification of those areas of the wings, which would terminate the repetitive inspection requirements. This proposal is prompted by reports indicating that, during fatigue testing of the wing structure, cracks developed in the aft spar lower cap, in certain stringer

butterfly clips, and in certain fastener holes due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent such fatigue-related cracking, which could lead to the failure of the aft spar cap and consequently could reduce structural integrity of the wing.

DATES: Comments must be received by August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 2855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51, M.C. 2–60. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–50–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during fatigue testing of the wing structure of a McDonnell Douglas Model DC–10–10 series airplane, cracks developed in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface. The cause of this cracking has been attributed to fatigue-related stress. The effects of such fatigue-related cracking could lead to the failure of the aft spar cap. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992, which describes procedures for performing repetitive eddy current inspections of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface. This service bulletin also describes procedures for modification of those areas of the wings. For certain airplanes, the modification involves stress coining the fastener holes and replacing existing fasteners with interference-fit fasteners, which will minimize the possibility of crack development. For certain other airplanes, the modification involves adding shear angles to the panel supports of the wing and ring pad stress coining the fastener holes of the access doors of the wing, which will minimize the possibility of cracks developing in the stringer clips and fastener holes of the access doors. Accomplishment of these modifications would eliminate the need for the repetitive inspections.

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 repetitive eddy current inspections of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface. The proposed AD would also require modification of those areas of the wings, which would terminate the required repetitive inspections. These inspection and modification actions would be required to be accomplished in accordance with the service bulletin described previously. If any cracks are detected, the repair would be required to be accomplished in accordance with a method approved by the FAA.

The FAA points out that AD 94–23–01, amendment 39–9063 (59 FR 58766, November 15, 1994), currently requires repetitive inspections of the wing rear spar lower cap [reference paragraph (g) of that AD] and installation of crack preventative modifications [reference paragraph (h) of that AD] between Xors 410 and Xors 430. Revision 7 of McDonnell Douglas DC–10 Service Bulletin 57–36, as described above, specifies procedures for accomplishing the identical inspections and modifications referenced in AD 94–23–01, but expands the area to between Xors 409 to Xors 455. In light of this, the FAA has determined that accomplishment of paragraphs (g) and (h) of AD 94–23–02 are considered acceptable for compliance with the applicable inspections and modifications of that area that would be required by this proposed AD. A note to this effect has been included in the text of the proposed AD.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 53 Model DC–10–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 262 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $125,609 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,490,437, or $141,329 per airplane.

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

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

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 95–NM–50–AD.

Applicability: Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections and modifications required by paragraphs (g) and (h) of AD 94–23–01, amendment 39–9063, accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–10 Service Bulletin 57–123, dated June 8, 1993, or McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 6, dated February 25, 1991, are considered acceptable for compliance with the applicable inspections and modifications required by this amendment for the affected structure.

To prevent fatigue-related cracking, which could lead to the failure of the aft spar cap and subsequent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 15,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992.

(1) If no cracks are detected, repeat the inspection thereafter at intervals not to exceed 2,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 42,000 total landings or within 5 years after the effective date of this AD, whichever occurs later, modify the aft spar lower cap, the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and the fastener holes of the access doors of the inboard upper surface of the wings, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirement of this AD.

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

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

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

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14768 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–209–AD]

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes. This proposal would require modification of the aileron support frame of the wings. This proposal is prompted by reports indicating that tensile cracks have been found at a certain mounting hinge of the aileron support frame during full scale fatigue testing of the test article due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent such fatigue-related cracking, which could result in loss of

the aileron control surface and the inability of the pilot to control rolling moments of the airplane.

DATES: Comments must be received by July 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–209–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Ǵeńerale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111, –211, and –231 series airplanes. The DGAC advises that tensile cracks have been found at the No. 3 mounting hinge of the aileron support frame during full scale fatigue testing of the test article. The cracks in the test article were discovered at 32,338 simulated flight cycles. Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue-related cracking at the mounting hinge of the aileron support frame of the wings, if not detected and corrected in a timely manner, could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane.

Airbus has issued Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993, which describes procedures for modification of the aileron support frames of the wings. One modification involves replacing the number 1, 2, and 3 aileron support frames on the rear spar of the wing with re-designed aileron support frames. These re-designed support frames have larger diameter lugs with bushings and increased blend radii. Another modification involves re-positioning and installing new electrical cable raceways, and installing new brackets and clamps for the hydraulic lines at the number 2 aileron servo-control. These modifications improve the fatigue life of the aileron support frames. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 93–108–044(B), dated July 7, 1993, in order to assure the continued airworthiness of these airplanes in France.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the aileron support frames of the wings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long standing requirement.

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 54 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $31,481 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $173,605, or $34,721 per airplane.

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

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

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 94–NM–209–AD.

Applicability: Model A320–111, –211, and –231 series airplanes, serial numbers 005 though 043 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking at the mounting hinge of the aileron support frames of the wings, which could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane, accomplish the following:

(a) Prior to the accumulation of 14,000 flight cycles or within 500 flight cycles after the effective date of this AD, whichever occurs later, modify the aileron support frames of the wings, in accordance with Airbus Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14767 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 17

Reports by Futures Commission Merchants, Members of Contract Markets and Foreign Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend Rule 17.01 and to modify the Form 102 required to be filed by clearing members, futures commission merchants (FCMs) and foreign brokers. This form identifies persons having financial interest in, or control of, special accounts in futures and options. The proposed amendments clarify the information required on the Form 102 for various kinds of special accounts reported to the Commission. The Commission is also proposing to amend Rule 17.02 concerning the time in which a completed Form 102 must be filed. The proposed rules would require that certain specified identification information be provided on the first day that a special account is reported to the Commission and that a completed Form 102 be filed with the Commission within three business days of that date.

EFFECTIVE DATE: Comments must be received by August 15, 1995.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should make reference to ''Form 102 changes.''

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Supervisory Statistician, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–3310.

SUPPLEMENTARY INFORMATION: Part 17 of the Commission's regulations requires that FCMs, clearing members, and foreign brokers (''firms'') submit a daily report to the Commission with respect to futures positions in all special accounts on their books.[1] Information required to be provided to the Commission includes quantities of reportable futures positions, exchanges of futures for cash, and delivery notices issued or stopped by each special account.[2] For reporting purposes, futures positions in all accounts controlled by the same person and those in which a person has a 10 percent or more financial interest must be combined and treated as if they are held in a single account. The firm assigns a reporting number to the special account and reports all information to the Commission using this number.[3]

In addition to the reporting number and the position and transaction information mentioned above, the firm must file a CFTC Form 102 showing the information specified under § 17.01 of the regulations for each special

[1] Special account means any commodity futures or option account in which there is a reportable position, 17 CFR 15.00 (1994). Firms report futures information to the Commission and option information to the exchanges.

[2] A reportable position is any open position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations, 17 CFR 15.03 (1994).

[3] The firm's reporting number may be the account number carried on its books. However, as noted above, the number may refer to a collection of accounts that are owned and/or controlled by the same person.

account.[4] This information identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported, and gives preliminary information whether positions and transactions are commercial or non-commercial in nature.[5] The form must be filed when the account first becomes reportable and updated when information concerning financial interest in or control of the special account changes.[6] In addition to its use by the Commission, the Form 102 is used by the exchanges to identify accounts reported through their large trader reporting systems for both futures and options.[7]

Effective August 16, 1993, the Commission adopted amendments to part 17 of the regulations which clarified the reporting of futures positions of commodity pools, certain commodity trading advisors and accounts controlled by two or more persons.[8] These amendments primarily addressed the reporting of accounts controlled by independent account controllers for eligible entities, conforming this reporting to the same method used by the Commission to determine compliance with speculative limits.[9] Although certain amendments were made to Rule 17.01, the Commission did not change its Form 102. Rather, Commission staff at that time began a review of the Form 102 in relation to the newly amended Rule 17.01 and to changes in the nature of accounts carried and reported by firms since the last substantive revision of the form by the Commission.[10]

Staff review of this matter concluded that there are generally three types of special accounts reported to the Commission where information requirements differ: House and customer omnibus accounts; accounts controlled by independent account controllers; and accounts generally owned and controlled by the same entity or an employee of the entity. The current Form 102 and Rule 17.01 require the same information for all accounts. Since all of the information is not pertinent for each of the different types of special accounts, the form is subject to varying interpretations and may be confusing for both the persons filing the form and those who receive it.

In view of this, Commission staff interviewed their counterparts at the exchanges in order to develop a new Form 102 which resolves some of the ambiguities in the present form making it more useful to both the exchanges and the Commission. The views of the operations committees of the Futures Industry Association (''FIA'') were also sought and are discussed below. Persons on these committees represent the back office staff of clearing members and FCMs generally responsible for completing and filing the Form 102.

The proposed, modified Form 102 is included as an attachment to this notice. The amendments to Rule 17.01 conform the information required in the proposed regulations to that asked on the form.[11] In this respect, the rule amendments will not increase the information currently required under the rule for various types of accounts.

The New Form 102 and Proposed Amendments to Rule 17.01

As noted above, Commission staff have identified three types of special accounts that firms generally report: Omnibus accounts; accounts controlled by an independent account advisor; and accounts owned and controlled by the same entity or employee of the entity.

Item 1 on the proposed Form 102 requires that the firm classify the special account as one of the three types (Sec. 1(a), 1(b) or 1(c)) and give identifying information concerning the person or legal entity holding and/or controlling the account in item 1(d). In addition, if the account is not an omnibus account, the firm must report whether the person or legal entity identified in item 1(d) is a Commodity Trading Advisor (''CTA'') or a Securities Investment Advisor (''SIA''). See proposed §§ 17.01(b)(1), (b)(1) (i), (ii), (ii)(A), and (iii)(A).

The reason for identifying SIAs is that many of the participants in stock index futures are SIAs. Exchanges that trade stock index futures have created exclusions from certain of their rules for SIAs. The exchanges therefore believe it is important to identify such persons for enforcement purposes. The Commission also believes this information may be important to determine if investigations or studies should be conducted in cooperation with the Securities and Exchange Commission. Other information required for each type of special account is discussed below.[12]

Omnibus Accounts

For reporting purposes an omnibus account is considered an account carried on the books of an FCM (carrying firm) for and in the name of another FCM, clearing member, or foreign broker (originating firm) where trading in the account may be conducted for two or more persons at the originating firm and the traders are not separately identified to the carrying firm. Since the Commission will contact the originating firm to file the necessary reports required by part 17 of the regulations, the carrying firm need only identify the account as a house or customer omnibus account (question 1(a) on the Form 102) and provide the identifying information specified in item 1(d) of the form. See proposed §§ 17.01(b)(1), and (b)(1)(i).

Accounts Controlled by Independent Account Advisors

In pertinent part, an independent account advisor is a person who specifically is authorized by an FCM or eligible entity, as defined in part 150, to control trading decisions on behalf of, but without the day-to-day direction of, the FCM or eligible entity and over whose trading the FCM or eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to supervise diligently the trading done on its behalf.[13] As noted above, the Commission amended Rule 17.00 in 1993 to provide that all accounts controlled by independent account advisors for FCMs and eligible

[4] 17 CFR 17.01 (1994).

[5] Account types are shown on the CFTC Form 102 as house or customer omnibus, individual, partnership, corporation, etc.

[6] 17 CFR 17.02 (1994).

[7] Part 17 of the regulations requires that firms identify large traders in options on the Form 102 and transmit the form to the appropriate exchange in accordance with their rules. Those exchanges that maintain a futures large trader reporting system also use the CFTC Form 102 for identifying futures large traders.

[8] 58 FR 33327 (June 17, 1993).

[9] Eligible entities are defined in Commission Rule 150.1 as commodity pool operators, operators of a trading vehicle which is excluded or who themselves have qualified for the exclusion from the definition of the term ''pool'' or ''commodity pool operator,'' respectively, under § 4.5 of this chapter or a commodity trading advisor.

[10] These changes occurred in September of 1982 when the form was revised to include instructions for reporting option large trader information to the exchanges.

[11] On a related issue, the Commission is also proposing to amend Rule 17.01 to require that option and futures accounts be reported using the same designator. This may be any string of alphanumeric characters up to the maximum number permitted. Currently, Rule 17.01 specifies that a designator for a futures account be numeric while that for an option account can be alphanumeric. The restrictions on the use of alphanumeric characters for futures accounts is no longer necessary. Using the same designator for both types of accounts for the same persons will reduce the number of Form 102s that firms must file and that the Commission must process.

[12] Items 6 through 12 on the proposed Form 102 must be provided for all special accounts. This concerns information about the associated person handling the account and the firm filing the report.

[13] The Commission has specified other indices of control to determine if certain accounts should be considered separate from other accounts owned or controlled by an FCM or eligible entity. *See*, for example the Commission's ''Statement of Policy on Aggregation'' (44 FR 33839, June 13, 1979) and Rule 150.1 (17 CFR 150.1, 1994).

entities would be treated as a single account and reported in the name of the advisor.[14] Changes to the Form 102 specifically provide for this. See proposed §§ 17.01(b)(1) and (b)(1)(iii). Certain additional information must be provided on all accounts included in this type of special account. If the special account is a customer trading program and involves 10 or more separate accounts of other persons, firms need only give the name of the program and identify those accounts held by commodity pools in item 3(a) on the Form 102.[15] Information concerning other controlled accounts is reported in item 3(b). See proposed § 17.01(b)(1)(iii)(B) and (C). On the new form, the account numbers of the controlled accounts must now be reported. This information is helpful to those exchanges using their large trader systems to identify accounts on the daily trade register. Additionally, the information will be useful when Commission or exchange staff contact firms about specific accounts on their books.[16]

The operations committees of the FIA which were interviewed posed a number of questions concerning accounts controlled by independent account advisors. First, those surveyed by the Commission suggested that a distinction be made between managed and guided accounts. The Commission does not agree. In its 1979 Statement of Policy on Aggregation the Commission considered differences between managed and guided account programs.[17] The Commission determined then that there was little difference between managed and guided account programs since such programs are designed and represented to customers to give best results by complete or general participation in the trades generated by the program.

The operations committees also noted that a definition of ''program'' might be helpful and questioned whether the language in item 3(a) concerning ''programs in which 10 or more accounts participate'' referred to all accounts parented to an investment advisor and whether this would include investment partnerships. Commission Rule 15.00(f) currently defines a customer trading program for reporting purposes as:

> Any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise directly or indirectly controls trading done and positions held by any other person.

Generally, this refers to all accounts parented to an investment advisor.

With respect to investment partnerships, if all partners make trading decisions for the partnership and share in ownership rights of the assets of the partnership, then under § 17.00(b)(1)(ii) accounts of the partnership should be reported in the name of the partnership.[18] In this instance, none of the partners are parented to the partnership account for reporting. A second type of partnership involves limited partners. Many commodity pools are organized in this manner. In this case, if the partnership is traded by an independent account advisor for an FCM or eligible entity, the partnership is reported in the name of the independent account advisor.[19] If the partnership trading is conducted by a general partner and there is only one such person, then the partnership is reported in the name of the general partner.[20]

Those who are required to respond on the Form 102 also suggested that consideration be given to include instructions or guidelines in completing the Form 102, especially as it relates to independent account advisors. Generally, reporting issues and questions arise when multiple persons have financial interest or control of an account or control of an account is vested in persons other than those having a financial interest in the account. In such cases it is possible for reporting firms to combine and report positions in more than one manner.[21] The Commission has given guidance in §§ 17.00(b)(1)(i) and (ii) for reporting the more commonly occurring types of such situations. Answers to other problems are generally specific in nature depending on the particular circumstances surrounding each situation. In view of this, the Commission is instructing its staff to coordinate with their counterparts at the exchanges and give answers to reporting questions in writing. These answers, which will be publicly available, will serve as advisories on reporting, providing guidance on reporting issues within the context of those which have already been encountered.

Other Special Accounts

This includes accounts owned and controlled by the same person or entity (or controlled by an officer or employee of the entity) and general partnership or joint accounts. The information that is required for special accounts in this category on the new Form 102 is similar to that requested on the current Form 102. See items 1(d) and 2 on the Form 102 and proposed §§ 17.01(b)(1), 17.01(b)(1)(i), and (ii)(A)–(E). Additional information on the new form includes the names and locations of all persons authorized to trade an account included in the special account. Since this identifies employees or officers of corporations or other entities who conduct the actual trading, the information can be used to ensure that if persons are suspended from trading, they are not violating the suspension by masking their trading in the name of a business. The Commission, however, is limiting the amount of information that must be supplied. Large corporations may use multiple accounts and traders, creating a burden for firms to obtain and report all persons having trading authority for a special account. Moreover, for large corporations this information is not necessary for surveillance purposes. In view of this, the Commission is proposing that the names and locations of account controllers be provided only if there are five or fewer such traders.[22]

During staff interviews, those likely to be responding on the forms presented a number of other suggestions. Chief among these was a concern about the

[14] There is one general exception to this manner of reporting. If an FCM or eligible entity owns an account, the account is reported in the name of the FCM or eligible entity unless otherwise directed by the Commission. Reporting accounts in this manner will alert the Commission when an FCM or eligible entity trades above the speculative limit levels and that further investigation may be necessary.

[15] The Commission amended Rules 17.01 (b)(6) and 18.04(a)(5) in June 1993, to limit the amount of information that is supplied on Forms 102 and 40 concerning controlled accounts. As the Commission then noted, participants in customer trading programs tend to be small traders whose identity for market surveillance purposes is not needed on a routine basis. The Commission reserved the right to obtain this information on call (58 FR 33329 June 17, 1993).

[16] For these same reasons, the Commission is requiring that account numbers be provided in items 2(c) and 4 on the new form.

[17] 44 FR 33842 (June 13, 1979).

[18] On the new Form 102, as proposed, item 1(b) would be checked and the partnership identified in item 1(d). This manner of reporting general partnerships was set forth in the 1993 **Federal Register** Notice (58 FR 33328 June 17, 1993). Generally, this would also apply to joint accounts.

[19] Item 1(c) is checked and information about the advisor is supplied in item 1(d).

[20] Item 1(b) is checked and information about the general partner is supplied in item 1(d).

[21] As noted in the June 17, 1993 **Federal Register**, firms must report in a manner that avoids duplicate reporting of position data so that the data is suitable for regulatory analysis and publication (55 FR 33328).

[22] The remaining information on the proposed Form 102 (items 4–12) is substantively the same information that is asked on the current form and does not need further discussion.

turn around time for the Form 102 and the accuracy of the information that can be supplied in such a short time frame. Currently a Form 102 is due at the same time a special account is reportable for the first time. This is generally the business day following the trade date the account first exceeds reporting levels.[23] Since much of the required information comes from the sales force, delays in obtaining the information are not uncommon. Currently in such instances, Commission staff will accept a filing providing at least the identity and location of the account owner and/or controller within the first 24 hours with a completed Form 102 filed as soon as possible thereafter. This is the least amount of information deemed necessary in order to assign a CFTC trader number to the account. Some exchanges also require that minimal identifying information be provided immediately allowing some longer period for firms to complete and return the Form 102.

In order to obtain more accurate information, the Commission is proposing that Rule 17.02 be amended to require that firms need only supply on an immediate basis the information in items 1(a), 1(b), or 1(c) and the name and location of the trader who will be identified in 1(d).[24] Receipt of a fully completed and accurate Form 102 will be required within 3 business days of the date the special account is first reported.[25]

Exchange Initiatives

Staff of the Chicago Mercantile Exchange (''CME'') have provided the Commission with proposed record layouts for the electronic transmission of information on the Form 102. CME staff have inquired about the feasibility of firms electronically transmitting Form 102 information to the exchange and the exchange then providing the Commission with the information. The CME indicates that they have had preliminary talks concerning this matter with a number of firms, bookkeeping services,[26] and staff of the Chicago Board of Trade. In the meetings concerns were raised about the Commission's role in this process. Apparently there is concern whether the Commission would be able to receive transmissions in the prescribed format, whether multiple transmissions to the exchanges and the Commission would be necessary and whether the Commission might begin its own development effort. Commission staff are currently reviewing the proposed format and have scheduled further discussions with exchange staff. In the interim, the Commission invites all interested persons to submit comments concerning the CME's suggestion to electronically transmit Form 102 data. The Commission is especially interested in the feasibility of such a proposal, whether and to what extent data required on the new Form 102 is currently in machine readable form, potential costs and benefits to firms if the information is transmitted electroni cally, and any alternate means through which the firms believe they can reduce the cost of filing Form 102 information.

Other Related Matters

The Regulatory Flexibility Act (RFA)

The RFA requires that agencies consider the impact of substantive rules on small businesses. These amendments affect large traders, FCMs, commodity pools, CTAs and other similar entities such as foreign brokers and foreign traders. The Commission has defined ''small entities'' in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618–18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and FCMs are not considered to be small entities for purposes of the RFA. In this regard, the proposed amendments to reporting requirements relating to the Form 102 fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable positions, i.e., large positions. Thus, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that these proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission however, invites comments from any firm which believes that these rules would have a significant economic impact upon its operation.

Paperwork Reduction Act (''PRA'')

The PRA of 1980, 44 U.S.C. 3501 et. seq., imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these rules and their associated information collection requirements to the Office of Management and Budget.

The burden associated with the entire collection, including this rule, is as follows:

Average Burden Hours Per Response—.1587 hour
Number of Respondents—3709
Frequency of Response—Daily

The burden associated with this specific proposed rule, is as follows:

Average Burden Hours Per Response—0.2 hour
Number of Respondents—6,592
Frequency of Response—On occasion

Persons wishing to comment on the information which would be required by this proposed rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW, Washington, DC 20581, (202) 254–9735.

List of Subjects in

17 CFR Part 17

Brokers, Commodity Futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1989), the Commission proposes to amend Chapter I of title 17

[23] 17 CFR 17.02 (1994).

[24] Similarly, the Commission is proposing that updates to the Form 102 be filed within three business days of the subject changes. The Commission is also proposing to amend Rule 17.02 to require that hardcopy reports be filed with the Commission by facsimile rather than mail. Currently, all such reports are filed by facsimile. If facsimile reporting represents a problem for some firms, the rule provides that the Commission's designee may specify an alternate means of reporting.

[25] Other suggestions put forth by the FIA and methods suggested by Commission staff for addressing these concerns are as follows:

(1) More space should be provided on the form to alleviate the need for continuation sheets. Since the form will be printed on both sides of a single page, additional space is not available;

(2) Question 5 concerning contract markets used for hedging should contain check boxes with possible choices of specific futures and option markets. Currently, there are over 40 markets which could be considered highly active. It would be difficult and probably of little help to list only a few markets; and

(3) Customers should either complete or sign the form since the filing of a false or fraudulent report may be a basis for administrative action. The Commission currently receives a Form 40 from customers. Generally, a Form 40 requires the reporting of more complete information. However, it is not as timely in its filing as the Form 102. The Commission believes that obtaining information from both sources on the Forms 102 and 40, respectively, is the best method for assuring both timely and complete information necessary for market surveillance.

The Commission requests further comment on the feasibility of these suggestions and alternative methods of addressing these concerns.

[26] Bookkeeping services provide software and/or hardware for firms' operational staff. These services would be responsible for developing software to transmit Form 102 information.

of the Code of Federal Regulations as follows:

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

1. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6d, 6f, 6g, 6i, 7 and 12a.

2. Section 17.01 is proposed to be revised as follows:

§ 17.01 Special account designation and identification.

(a) *Designation of special account.* For the purpose of reporting futures information to the Commission and option information to a contract market, each futures commission merchant, clearing member and foreign broker shall assign a unique designator to each special account for futures and options and shall report the account only by such designator. *Provided,* that the designator for options and futures shall not be changed or assigned to another account without prior approval of the Commission.

(b) *Identification of special account.* When a Special Account is reported for the first time, the futures commission merchant, clearing member or foreign broker shall identify the account to the Commission or to the contract market on Form 102 showing the information requested thereon, including:

(1) The designator assigned to the account for reporting purposes and the name, address, business phone and, for individuals, the person's job title and employer for:

(i) The person originating the account, if the special account is a house omnibus or customer omnibus account;

(ii) The person (*i.e.,* individual, corporation, partnership etc.) who owns the special account if such person (or an employee or officer) also controls the trading of the special account. And in addition:

(A) The registration status of the person as a commodity trading advisor or a securities investment advisor;

(B) The legal organization of the person and the person's principal business or occupation;

(C) Account numbers and account names included in the special account, if different than supplied in paragraph (b)(1) of this section;

(D) The name and location of all persons not identified in paragraph (b)(1) of this section having a 10% or more financial interest in the special account, indicating those having discretionary trading over the account; and

(E) For special accounts with five or fewer persons having trading authority, the names and locations of all persons with trading authority that have not been identified in paragraphs (b)(1) or (1)(ii)(D) of this section; or

(iii) The account controller, if trading of the special account is controlled by a person or legal entity who is an independent account controller of the account owners as defined in § 150.1(e). And, in addition:

(A) The registration status of the person as a commodity trading advisor or a securities investment advisor;

(B) For publicly offered managed or guided account programs in which 10 or more accounts participate, the account number and the name of each guided or managed account program and of each pool and the name and address of the commodity pool operator for the pool that participates in the program;

(C) For each controlled account not participating in a program identified above, the account number and the name and address of each person having a 10% or more financial interest in the account. For commodity pools, provide the account number, name of the pool and name and address of the commodity pool operator; and

(D) On call by the Commission or its designee the account numbers and names and locations of each person participating in a program.

(2) For each account not included in the special account that the person identified in paragraph (b)(1) of this section either controls or in which such person has a financial interest of 10% or more, the account number and the name of the account.

(3) For futures or options, commodities in which positions or transactions in the account are associated with a commercial activity of the account owner in a related cash commodity or activity (*i.e.,* those considered as hedging, risk-reducing, or otherwise off-setting with respect to the cash commodity or activity).

(4) The name and business telephone number of the associated person of the futures commission merchant who has solicited and is responsible for the account or, in the case of an introduced account, the name and business telephone number of the introducing broker who introduced the account.

(5) Name and address of the futures commission merchant, clearing member or foreign broker carrying the account, the signature, title and business phone of the authorized representative of the firm filing the report, and the date of signing the Form 102.

(c) *Form 102 update.* If at the time an account is in special account status and a Form 102 filed by a futures commission merchant, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraphs (b)(1)(B)(iv), (b)(1)(C) and (b)(2) of this section since the previous filing, the futures commission merchant, clearing member, or foreign broker shall file an updated Form 102 with the Commission or the contract market, as appropriate, within three business days after such change occurs.

3. Section 17.02 is proposed to be amended by revising the introductory text and paragraph (b) and by adding a new paragraph (c) as follows:

§ 17.02 Place and time of filing reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed at the nearest appropriate Commission office as specified in paragraphs (a), (b), and (c) of this section, wherein the times stated are eastern times for information concerning markets located in that time zone and central time for information concerning all other markets.

(a) * * *

(b) For data submitted in hardcopy form pursuant to §§ 17.00 (a), or (h) at a Commission office by facsimile or in accordance with instructions by the Commission or its designee not later than 9:00 a.m. on the business day following that to which the information pertains.

(c) For data submitted pursuant to § 17.01 on the Form 102;

(1) The type of special account specified in 1(a), 1(b) or 1(c) and the name and location of the person to be identified in 1(d) on the Form 102 by facsimile or telephone on the same day that the special account in question is first reported to the Commission; and

(2) A completed Form 102 within three business days of the first day that the special account in question is reported to the Commission.

* * * * *

Issued in Washington, DC, this June 12, 1995, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

Note: CFTC Form 102 is being published for informational purposes only and will not be codified in the Code of Federal Regulations.

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION
Identification of "Special Accounts"

CFTC Form 102 (Revised 4/95)

OMB No. 3038-0009

For Administrative Use Only	
Trader Code:	Firm Code:

NOTICE: Failure to file a report required by the Commodity Exchange Act and the regulations thereunder, or the filing of a false or fraudulent report may be a basis for administrative action under 7 U.S.C. Sec. 9, and may be punishable by fine or imprisonment, or both, under 7 U.S.C. Sec. 13 or 18 U.S.C. Sec. 1001.

INSTRUCTIONS TO FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS

Assign a reporting number to each special account when it is reportable for the first time in futures or options. If an account has been assigned a number for reporting in futures (options), use the same number for reporting options (futures). Such reporting number must not be changed or assigned to any other special account without prior approval of the Commodity Futures Trading Commission. For a futures account, transmit the form to the Commission. For an option account, transmit the form to the appropriate contract market in accordance with their instructions.

PLEASE TYPE OR PRINT

1. Check one of (a), (b) or (c) for the special account and give identifying information as directed below:

(a) ☐ House omnibus or ☐ Customer omnibus account of an FCM, clearing member, or foreign broker. Report the information in (d) below for that firm. In addition, complete items 6-12.

(b) ☐ Account(s) owned and controlled by the same person or legal entity, such as a corporation or partnership (or controlled by an employee or officer of the entity). Report the information in (d) below for the person or other legal entity who owns and controls the accounts. In addition, complete items 2 and 4-12.

(c) ☐ Accounts controlled by an advisor or legal entity who is independent of the account owners. Report the information in (d) below for the advisor or legal entity controlling the special account. In addition, complete items 3 through 12.

(d) Name: _____ Reporting Number: _____
If individual, Last, First, Middle Initial

Street: _____ Business Phone: _____

City: _____ State/Country: _____ Zip/Postal Code: _____

If individual, Employer : _____ Job Title: _____

If (b) or (c) is checked, is the above-identified person or legal entity registered as a:

commodity trading advisor ☐ Yes ☐ No

securities investment advisor ☐ Yes ☐ No

If this special account is reported in the name of a business, such as a corporation, give the name of an officer or employee to contact:

Name: _____ Job Title: _____
Last, First, Middle Initial

2. If item 1(b) is checked, complete the following:

(a) Check as many as apply to the legal entity identified in 1(d) above:

☐ Individual ☐ Trust ☐ Partnership ☐ Joint

☐ Sole Proprietorship ☐ Corporation ☐ Other (Specify) _____

(b) Principal Business or Occupation: _____

(Continued on Reverse Side)

(c) Report on an attachment all account numbers and account names included in this special account if different than identified in 1(d) above.

(d) Report all persons or entities not identified in 1(d) above who have a 10% or more financial interest in this special account, including limited partners, indicating with an asterisk those having discretionary trading authority with respect to this account . If none, write "none". Use a continuation sheet, if necessary.

Name: _____
Last, First, Middle Initial

Location: _____
City and State or Country

(e) Report all persons other than those above who control the trading of accounts included in the special account. Use a continuation sheet, if necessary. If there are more than five such persons, show "mulltiple controllers" in the space below.

Name: _____
Last, First, Middle Initial

Location: _____
City and State or Country

3. Controlled Accounts. If you checked item 1(c), complete (a) and (b) below. Use (a) to report customer trading programs in which ten or more accounts participate. Use (b) to report all other controlled accounts.

(a) Program Name: _____ For each commodity pool participating in the program, provide on an attachment the account number, name of the pool, and name and address of the CPO.

(b) For accounts not in a program, or programs having fewer than ten accounts, provide on an attachment for each account the account number and name and address of persons having a 10% or more financial interest in the account. For commodity pools, provide the account number, name of the pool, and name and address of the CPO.

4. If the person or entity identified in 1(d) has trading authority over, or a 10% or more financial interest in, accounts not included in the special account, complete the information below for each such account. If none, write "none". Use a continuation sheet if necessary. Check "F" for financial interest and "C" for control.

Name: _____ Account Number: _____ ☐ F ☐ C

Name: _____ Account Number: _____ ☐ F ☐ C

5. Are trades and positions in this special account usually associated with commercial activity of the account owner in related cash commodities (i.e., positions considered as hedging in futures or options)? ☐ Yes ☐ No

If "yes," list those specific futures or option markets in which the trader hedges. Use a continuation sheet if necessary.

_____ _____ _____ _____ _____

6. Name, location and business phone number of the account executive handling the account. (If account executive is in a foreign country, list country and city.)

Name: _____ Business Phone: _____
Last, First, Middle Initial

Location: _____
City and State or Country

7. Firm Name and Address:	8. Name (Print):	
	9. Title:	
	10. Business Phone:	11. Date:
	12. Signature:	

[FR Doc. 95–14754 Filed 6–15–95; 8:45 am]
BILLING CODE 6351–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–76–92; PS–51–93]

RIN 1545–AR48; RIN 1545–AR93

Recognition of Gain or Loss by Contributing Partner on Distribution of Contributing Partner on Other Property; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the recognition of gain or loss on certain distributions of contributed property by a partnership. This document also contains proposed regulations relating to the recognition of gain on certain distributions to a contributing partner.

DATES: The public hearing originally scheduled for Monday, June 19, 1995, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 704(c)(1)(B) of the Internal Revenue Code of 1986, and proposed regulations under section 737. A notice of proposed rulemaking, and public hearing appearing in the **Federal Register** for Monday, January 9, 1995 (60 FR 2352), announced that a public hearing on the proposed regulations would be held on Monday, June 19, 1995, beginning at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Monday, June 19, 1995, is cancelled.

Jacquelyn B. Burgess,

Alternate Federal Register Liasion Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–14823 Filed 6–15–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

RIN: 1215–AA98

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (DOL) is proposing to delete the requirement in § 4.7 of 29 CFR part 4 that any service contract of the Federal Government in an amount less than $2,500 that is subject to the McNamara-O'Hara Service Contract Act of 1965, as amended (SCA), must contain a clause specifying that the contractor or any subcontractor shall pay the minimum wage under the Fair Labor Standards Act (FLSA) to employees engaged in the performance of the contract. This proposed revision is being made to conform the regulations to a new class of Federal government purchases established by the Federal Acquisition Streamlining Act of 1994 (FASA). Requirements otherwise applicable to Federal contracting are eliminated for purchases under $2,500 for the purpose of facilitating the use of government credit cards for the making of low dollar value purchases of supplies and services. The streamlining objectives of the new procurement procedures contemplated by FASA are impeded by contract clause requirements in § 4.7, which were intended for use in contracts awarded traditional procurement procedures.

DATES: Comments are due on or before July 17, 1995.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW, Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: Raymond L. Kamrath, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The existing information collection requirements contained in Regulations, 29 CFR part 4 were previously approved by the Office of Management and Budget under OMB control number 1215–0150. The general Fair Labor Standards Act (FLSA) recordkeeping requirements which are restated in Part 4 were approved by the Office of Management and Budget under OMB control number 1215–0017.

II. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, 108 Stat. 3243) was enacted into law on October 13, 1994. Section 4001 of this Act amends the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to establish a ''simplified acquisition threshold'' of $100,000. In addition, § 4301 of FASA amends the Office of Federal Procurement Policy Act to establish a new class of purchases referred to as ''micro purchases,'' and a micro purchase threshold of $2,500. Under this section, among other things, purchases not exceeding $2,500 are not subject to the Small Business Act reservation requirement, Buy American Act, the requirement to secure competitive quotations, and Federal employees making such purchases are not deemed ''procurement officials.'' The new micro purchase authority, based on a recommendation of The National Performance Review (NPR), facilitates the use of credit cards by Federal agencies on small dollar purchases of supplies and services. For such purchases, the credit card procedure becomes both the method of payment and a method of contracting. Because the inclusion of contract clauses in small purchases hinder implementation of the new micro purchase authority, the Office of Federal Procurement Policy in the Office of Management and Budget asked the Department to review the contract clause requirement in § 4.7 of 29 CFR part 4 for service contracts under $2,500.

Section 2(b) of the Service Contract Act of 1995 (SCA) (41 U.S.C. 351(b)(1)) generally obligates all contractors and subcontractors who are awarded contracts principally for the furnishing of services through the use of service employees, regardless of contract amount, to pay not less than the Federal minimum wage under § 6(a)(1) of the Fair Labor Standards Act (FSLA) to the employees engaged in the performance of such contracts. Unlike § 2(a) of the SCA which requires every service contract in excess of $2,500 to include particular stipulations relating to the Act's prevailing wage and fringe benefit provisions and other labor standard protections, § 2(b) does not statutorily require a ''clause'' to implement the obligation of covered service contractors or subcontractors to pay service employees not less than the minimum wage under § 6(a)(1) of the FLSA. Because the clause mandated by § 2(a) of the SCA for covered contracts in excess of $2,500 advises contractors and subcontractors of the obligation to pay FLSA minimum wages in the absence of prevailing wage attachment for the contract (see paragraph (d)(1) of § 4.6), a counterpart minimum wage clause was considered appropriate for contracts not exceeding $2,500, and the requirement has been a part of the regulations since their inception.

The Department believes that the deletion of the requirement for a minimum wage clause in SCA-covered contracts not exceeding $2,500 will not adversely affect labor standards protections afforded service employees engaged in the performance of such contracts. Although the proposal removes the obligation of contractors and subcontractors to pay not less than minimum wages to their service employees as a condition of contract, the obligation to pay at least the minimum wage to any service employee performing on an SCA-covered contract is specifically contained in § 2(b) of the SCA, and is also set forth in § 6(e)(1) of the FLSA. This statutory obligation is defined further in the existing regulations at § 4.2 of 29 CFR part 4. Accordingly, the proposal is considered necessary and proper to facilitate the streamlining objectives of FASA's § 4301.

Executive Order 12866/§ 202 of the Unfunded Mandates Reform Act of 1995

This proposed rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, nor does it require a § 202 statement under the Unfunded Mandates Reform Act of 1995. It will facilitate the handling of Federal agency purchases of $2,500 or less. The proposed change eliminates a contract clause, which impedes the efficiency contemplated by the use of purchase cards on small purchases authorized by the micro-purchase authority under the Federal Acquisition Streamlining Act of 1994. The proposed revision, however, will not eliminate the obligation of contractors and subcontractors to pay employees on such contracts not less than the minimum wage under § 6 of the FLSA.

Because the deletion of the contract clause would not affect contractor's responsibilities, the proposed change is not expected to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Furthermore, deletion of the clause would facilitate credit card purchases (thereby resulting in savings in paperwork processing) of services—estimated to be about 12 percent of all credit card purchases. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

This proposed rule will not have a significant economic impact on a substantial number of small entities. The rule simplifies the handling of small purchases of services and will primarily affect Federal agencies through reductions in burdensome paperwork. While small entities will benefit from less burdensome procurement procedures, the impact is believed to be insignificant because the purchase of services appropriate for credit card use is relatively small, *i.e.*, the bulk of purchases appropriate for credit card use is supplies. Thus, this proposal is not expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act, and the Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. A regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed at Washington, D.C., on this 13th day of June, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

For the reasons set forth in the preamble, subtitle A of title 29 is proposed to be amended as follows:

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. Authority citation for part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

§ 4.7 [Removed and Reserved]

2. In subpart A, § 4.7 is proposed to be removed and reserved.

[FR Doc. 95–14780 Filed 6–15–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–235; Amendment Number 70R]

Ohio Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSM is reopening the public comment period for a revised amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations

concerning the frequency of inspections at abandoned coal mining operations.

This document sets forth the times and locations that the Ohio program and the proposed amendment to that program will be available for public inspection, the comment period during which interest persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., E.D.T. on July 3, 1995. If requested, a hearing on the proposed amendment will be held at 1 p.m., E.D.T. on June 26, 1995. Requests to speak at the hearing must be received on or before 4 p.m., E.D.T. on June 23, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Beverly C. Brock, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly C. Brock, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1983, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 70 by letter dated March 28, 1995 (Administrative Record No. OH–2104). In this amendment, Ohio proposed to revise one rule at Ohio Administrative Code (OAC) section 1501:13–14–01 to make the Ohio program as effective as the corresponding Federal regulations concerning the frequency of inspections at abandoned coal mining operations.

OSM announced receipt of PA 70 in the April 11, 1995, **Federal Register** (60 FR 18380), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public period closed on May 11, 1995.

On May 11, 1995, OSM notified Ohio of its one comment about PA 70 (Administrative Record No. OH–2128). In response to the OSM comment, Ohio submitted Revised Program Amendment Number 70 (PA 70R) by letter dated May 31, 1995 (Administrative Record No. OH–2127). In PA 70R, Ohio is proposing one further revision to OAC section 1501:13–14–01 paragraph (A)(3)(c)(ii) to cross-reference Ohio's rule on individual civil penalties and Ohio's statute on criminal penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time limit indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., E.D.T. on June 23, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 752.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based

solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 8, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–14764 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Part 3100

[WO–610–4110–02 1A]

RIN 1004–AC26

Promotion of Development, Reduction of Royalty on Heavy Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking; notice of reopening of comment period.

SUMMARY: On April 10, 1995, the Bureau of Land Management (BLM) published in the **Federal Register** (60 FR 18081) a notice of proposed rulemaking to amend the regulations related to the waiver, suspension, or reduction of rental, royalty, or minimum royalty on ''heavy oil'' (crude oil with a gravity of less than 20 degrees). The notice allowed a comment period of 60 days, closing on June 9, 1995.

The Department of Energy (DOE) is currently developing new information on the potential impacts of the proposed rule. DOE is focusing particularly on the effects of raising the qualifying crude oil gravity to more than 20 degrees. In order to allow all interested parties sufficient time to review the new DOE information, BLM is reopening the comment period for an additional 30 days. Information on the DOE findings is available from Dr. John Bebout, at the address shown below under **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments should be submitted by July 17, 1995. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to Director (140), Bureau of Land Management, Room 5555, 1849 C Street, NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include ''attn: AC26'' and your name and return address in your internet message. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout, Bureau of Land Management (310), 1849 C Street, NW., Washington, DC 20240. (202) 452–0340.

Micheal A. Ferguson,

Acting Assistant Director, Resource Use and Protection.

[FR Doc. 95–14785 Filed 6–15–95; 8:45 am]

BILLING CODE 4130–84–P

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Swift Fox as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the swift for (*Vulpes velox*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing this species is warranted but precluded by other higher priority actions to amend the List of Endangered and Threatened Wildlife and Plants.

DATES: The finding announced in this document was made on June 12, 1995.

ADDRESSES: Information, comments, or questions concerning this petition should be submitted to the Field Supervisor, Fish and Wildlife Service, Ecological Services, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Donald R. (Pete) Gober, Field Supervisor, at the above address, telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Fish and Wildlife Service (Service) make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Notice of the finding is to be published promptly in the **Federal Register**. This notice meets that requirement for a 12-month finding made earlier for the petition discussed below. Information contained in this notice is a summary of the information in the 12-month finding, which is the Service's decision

document. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as through resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

A petition dated February 22, 1992, from Mr. Jon C. Sharps was received by the Service on March 3, 1992. The petition requested the Service to list the swift fox (*Vulpes velox*) as an endangered species in the northern portion of its range, if not the entire range. A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the **Federal Register** on June 1, 1994 (59 FR 28328).

The Service has reviewed the petition, the literature cited in the petition, other available literature and information, and has consulted with biologists and researchers familiar with the swift fox. On the basis of the best scientific and commercial information available, the Service finds the petition presented information indicating that the listing may be warranted but the immediate listing of the species is precluded by work on other species having higher priority for listing.

The petition and its referenced documentation states that the swift fox once occurred in abundant numbers throughout the species' historical range. The species was known from the Canadian Prairie Provinces south through Montana, eastern Wyoming, and North and south Dakota to the Texas Panhandle. The petitioner asserts that the swift fox has declined and is considered rare in the northern portion of its range. The petitioner indicates that the swift fox is extremely vulnerable to human activities such as trapping, hunting, automobiles, agricultural conversion of habitat, and prey reduction from rodent control programs. The petitioner requests that, at a minimum, the swift fox be listed as an endangered species in Montana, North Dakota, South Dakota, and Nebraska. Justification for such action as cited by the petitioner includes the present status of the species and its habitat in the petitioned area, the strong link to the prairie dog ecosystem, the large distance from the kit (*Vulpes macrotis*)-swift fox zone of intergradation, and the potential for these populations to contain the northern subspecies (*Vulpes velox hebes*).

In 1970, the Service listed the northern swift fox as endangered (35 FR 8485; June 2, 1970). This designation was removed in the United States due to controversy over its taxonomy; however, the designation as endangered in Canada remains (45 FR 49844; July 25, 1980).

In 1970, the Service listed the northern swift fox as endangered (35 FR 8485; June 2, 1970). This designation was removed in the United States due to controversy over its taxonomy; however, the designation as endangered in Canada remains (45 FR 49844; July 25, 1980).

The Service reviewed information regarding the status of the swift fox throughout its range. Historically, the swift fox was considered abundant throughout the Great Plains and the Prairie Provinces of Canada (Hall and Kelson 1959; Egoscue 1979; Zumbaugh and Choates 1985; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). Beginning in the late 1800's to early 1900's, the swift fox declined in numbers, and the northern population disappeared with the southern population decreasing in numbers (Cary 1911; Warren 1942; Egoscue 1979; Bee et al. 1981; FaunaWest 1991).

In the mid-1950's, the swift fox staged a limited comeback in portions of its historical range (Long 1965; Kilgore 1969; McDaniel 1976; Sharps 1977; Hines 1980; FaunaWest 1991). However, this reappearance was limited in nature and, in recent years, many of these populations have again declined. Several factors are provided as reasons for the decline of the species throughout much of its historical range. These factors include (1) loss of nature prairie habitat through conversion for agricultural production and mineral extraction, (2) fragmentation of the remaining habitat, creating a less suitable cropland-grassland habitat mosaic, (3) degradation of habitat due to prairie-dog control activities, (4) predation and interspecific competition, and (5) the species' vulnerability to human activities such as predator control, trapping, shooting, and collisions with automobiles (Hillman and Sharps 1978; Hines 1980; Armbruster 1983; Uresk and Sharps 1986; Jones et al. 1987; Sharps 1989; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Currently, swift fox exist in highly disjunct populations in a greatly reduced portion of the species' historical range (Hines 1980; Jones et al. 1987; U.S. Fish and Wildlife Service 1990; FunaWest 1991). Swift fox are believed to be extirpated in North Dakota. Remnant populations remain in Montana and Oklahoma. Small, disjunct populations of unknown status remain in South Dakota, Wyoming, Nebraska, Kansas, Colorado, New Mexico and Texas. There is limited but encouraging evidence that some reoccupation of its former range may be occurring in Montana, Oklahoma, Kansas, Colorado, and Wyoming. New Mexico also appears to contain localized populations distributed throughout reduced portions of the State's historical range. However, there has been no biological or scientific evidence presented to the Service during the extended status review period to confirm the viability or stability of any of these populations. Seventy to 75 percent of remaining swift fox populations are believed to reside on private lands, with the remaining populations on Federal lands belonging to the U.S. forest Service, the National Park Service, the Bureau of Land Management, and the Department of the Army.

Summary of Factors Affecting the Species

The following information is a summary and discussion of the five factors or listing criteria as set forth in section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the swift fox.

A. *The Present or threatened destruction, modification, or curtailment of the species' habitat or range.* The swift fox is a prairie-dwelling species that generally requires 518 ha to 1,296 ha (1,280 to 2,300 acres) of short to midgrass prairie habitat with abundant prey to support a pair (Cameron 1984; Jones et al. 1987; Rongstad et al. 1989; Jon Sharps, Wildlife Systems, pers. comm. 1993). Swift fox habitat is comprised of level to gently sloping topography containing an open view of the surrounding landscape (<15 percent slope), abundant prey, and lack of predators and competitors (Cutter 1958a; Hillman and Sharps 1978; Hines 1980; Fitzgerald et al. 1983; Lindberg 1986; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Historically, the species was distributed throughout the contiguous short to midgrass prairie habitat from the south-central Prairie Provinces in Canada to the southern portions of the western Great Plains. In recent times, the swift fox has experienced a significant reduction in its historic range due to a combination of human activities. Based on current range-wide swift fox distribution information, the Service estimates that the swift fox is extirpated from 80 percent of its historical range. Within the remaining 20 percent of its historical range, swift fox populations exist in scattered,

isolated pockets of remnant short to midgrass prairie habitat. The Service estimates that swift fox may actually occupy only half of the remaining 20 percent of its historical range.

Habitat loss and fragmentation has occurred due to a variety of human activities such a agricultural conversion of the prairie and mineral extraction. Beyond direct agricultural conversion, the remaining short to midgrass prairie ecosystem has been significantly altered due to creation of a grassland-cropland mosaic, with continued reduction of the prairies rodent prey base and modification of the native predator community. Roadways also alter the availability and suitability of habitat, thus fragmenting swift fox habitat and exposing them to traffic, trapping, shooting, predator control, and rodent control.

B. *Overutilization from commercial, recreational, scientific, or educational purposes.* Commercial trapping for other furbearers occurs throughout the range of the swift fox. Often swift fox are harvested incidental to commercial trapping for other furbearers such as coyotes (McDaniel 1976; Sharps 1984; Jones et al. 1987; U.S. fish and wildlife Service 1990). Unlike other furbearers, swift fox pelts are not particularly valuable (Arnold 1925; Jones et al. 1987; FaunaWest 1991). This lack of value and pelt quality has not completely stopped trade in swift fox pelts. Protection is minimal because the swift fox is unwary and naive, making it susceptible to trapping, ragardless of whether it is the targeted species. Legal and/or incidental take of the species is expected to continue.

The swift fox is legally harvested in four States (Colorado, New Mexico, Kansas, and Texas). In Wyoming, it is a protected species by virtue of its nongame status, but it is still legal to buy and sell swift fox pelts. In addition, Wyoming has supplied 25 to 30 swift fox per year to Canada for their recovery program. Harvest data received from the above States is insufficient to assist the Service in the determination of population trends or to determine the actual numbers being legally harvested on an annual basis. The New Mexico data shows a significant (95 percent) decrease in the kit-swift fox harvest in recent years, but its significance relative to swift fox status cannot be determined. The Colorado data shows that harvest of kit/swift fox has decreased from a high of 3,322 animals during the 1981–1982 season to 161 animals (fox) in 1990 and 373 animals in 1991, respectively. Harvest data from Kansas indicates that between 1982 and 1994, 1,220 swift fox were harvested from approximately 23 counties located in the western-most one-fourth of the State. Jones (1987) reports that available harvest data from Texas is limited, but it shows an annual harvest of between 300 and 500 animals.

C. *Disease and predation.* The effects of infectious diseases in swift fox are relatively unknown. However, they are susceptible to most diseases that plague canids (FaunaWest 1991). Studies conducted in California on the kit fox noted canine parvovirus as a major disease (FaunaWest 1991). Since parvovirus is found throughout the U.S. and is fatal to domestic dogs, it is probably also fatal to swift foxes. Other diseases documented in kit foxes include canine hepatitis, tularemia, brucellosis, toxoplasmosis, and coccidiomycosis (FaunaWest 1991). Many of these diseases are known to be widespread and their presence in swift fox populations is highly probable.

Because of major changes to the faunal community of the western Great Plains ecosystem, the swift fox has become extremely vulnerable to predation from coyotes. Historically, the gray wolf (*Canis lupus*) was the dominant canid in the Great Plains hierarchy. The gray wolf was not considered a significant predator on swift fox and, because it targeted large ungulates, it probably provided swift fox with a source of carrion (Moravek 1990; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). The coyote and red fox, while widely distributed in specific habitats, were not generally considered abundant because of the wolf's dominant canid role in the western Great Plains ecosystem (Johnson and Sargeant 1977). Coyotes are now the most abundant and widely distributed canid on the Great Plains (Alan Sargeant, U.S. Fish and Wildlife Service, pers. comm. 1992). Studies have shown that predation by coyotes has a severe impact on the survival of swift fox (Robinson 1961; Reynolds 1986; Rongstad et al. 1989; Sharps 1989; Moravek 1990; U.S. Fish and Wildlife Service 1990; Carbyn et al. 1992). Furthermore, the red fox, which historically existed in isolated pockets on the Great Plains, expanded its distribution westward because of agriculture development (Moravek 1990; A. Sargeant, pers. comm. 1992). Also red foxes undoubtedly compete with swift fox.

D. *Inadequacy of existing regulatory mechanisms.* The swift fox is listed as endangered in Nebraska, threatened in South Dakota, and is protected by regulation in Wyoming. Despite having this protective status, it is still legal to buy and sell swift fox pelts in Wyoming (Bob Oakleaf, Wyoming Game and Fish Department, pers. comm. 1993). The swift fox is listed as a furbearer in seven States (Colorado, Montana, Kansas, Oklahoma, New Mexico, North Dakota, and Texas) and it is legally harvested in Colorado, Kansas, Texas, and New Mexico). In Montana, Oklahoma, and North Dakota, no legal harvest of swift foxes is allowed because of the species' rarity (Arnold Dood, Montana Department of Fish, Wildlife and Parks, pers. comm. 1993; Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, pers. comm. 1993; Randy Kreil, North Dakota Game and Fish Department, pers. comm. 1993).

Since the swift fox is not federally protected and its pelts are of little economic value, there is little effort by the States to determine the status of the swift fox in their jurisdiction, even though it is harvested legally or incidentally taken. Other than State trapping regulations, there is little regulatory protection afforded the swift fox or its habitat. Efforts by the States to modify techniques to avoid the unintentional trapping of swift fox are minimal.

E. *Other man-made or natural factors affecting the species' continued existence.* The swift fox is inquisitive in nature, thus making it extremely vulnerable to human activities. Swift fox are easily trapped, shot, captured by dogs, or killed along country roadsides (Kilgore 1969; Hillman and Sharps 1978; Hines 1980; Sharps and Whitcher 1983; Uresk and Sharps 1986; U.S. Fish and Wildlife Service 1990; Dr. Clyde Jones, Texas Technology University, pers. comm. 1993). Additionally, swift fox are mistakenly taken for coyotes or by people wishing to remove all canids for fear of livestock predation (Zegers 1976).

Habitat loss and modification, rodent control programs, and other human activities often reduce the prey base, impacting the species' ability to find prey. Historically, the range of the swift fox and prairie dog overlapped extensively (Hall and Kelson 1959; Sharps 1993). Swift fox are extremely vulnerable to prey reduction caused by habitat modification and prairie dog control programs (Hines 1980; Egoscue 1979; Sharps 1984; Sharps 1989; Uresk and Sharps 1986; Moravek 1990). Where the prey base has been reduced, swift fox often seek out carrion along roadsides (Hines 1980). Additionally, predator control in the area is conducted by private individuals who use leg hold traps, snares, and shoot animals (U.S. Fish Wildlife Service 1990; Sharps 1993; FaunaWest 1991).

Finding

Section 4(b)(3)(B)(iii) of the Act states that the Service may make warranted but precluded findings if it can demonstrate that an immediate proposed rule is precluded by other pending proposals and that expeditious progress is being made on other listing actions. Since September 30, 1993, the Service has proposed the listing of 118 species and has finalized the listing for 182 species. The Service believes this demonstrates expeditious progress. Furthermore, on September 21, 1983 (48 FR 43098), the Service published a system for prioritizing species for listing. This system considers 3 factors in assigning species' numerical listing priorities on a scale of 1 to 12. The three factors magnitude of threat, immediacy of threat, and taxonomic distinctiveness.

After reviewing and considering the scientific merits and significance of all comments, recommendations, and study proposals received from State and Federal agencies and from private individuals relative to the Service's 90-day Administrative Finding, the Service has concluded that the magnitude of the threat to the swift fox is moderate throughout its present range. The States of Kansas, Colorado, and Wyoming have presented evidence that swift foxes have reoccupied former prairie habitats and have also moved into agricultural lands. However, scientific evidence also indicates that identifiable threats to the swift fox exist over the entire 10-State range, and the Service has concluded that the immediacy of these threats is ''imminent.'' The Service, in its determination of the current degree of threat to the species, also considered a long-range conservation strategy document drafted by an interagency State team which provides a framework of goals, objectives, and strategies. Implementation of this plan, including the formation of a swift fox working team should help reduce some of these threats to its survival. Having considered this draft conservation strategy document and the significance of the evidence provided by the aforementioned States, the Service believes that the magnitude of threats is ''moderate'' but the immediacy of these threats remains ''imminent.'' Therefore, a listing priority of 8 is assigned for the species. The Service will reevaluate this warranted but precluded finding 1 year from the date of the finding. If sufficient new data or information becomes available in the future regarding the magnitude of threats, abundance, and health of these swift fox populations, the Service will reassess the status of the species. The warranted but precluded finding elevates the swift fox's candidate species status from category 2 to category 1.

The Service's 12-month finding contains more detailed information regarding the above decisions. A copy may be obtained from the South Dakota Field office (see **ADDRESSES** section).

References Cited

A complete list of references cited in the rule is available upon request from the South Dakota Field office (see **ADDRESSES** section).

Author

The primary author of this document is David A. Allardyce (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 12, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14730 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 229

[Docket No. 950605147–5147–01; I.D. 052395C]

RIN 0648–AH33

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Authorization for Commercial Fisheries; Proposed List of Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the new management regime for the taking of marine mammals incidental to commercial fishing operations established by certain provisions of the Marine Mammal Protection Act of 1972 (MMPA) as added to that Act by certain amendments in 1994. The regulations would implement requirements to authorize vessels engaged in commercial fishing to incidentally, but not intentionally, take species and stocks of marine mammals upon the receipt of specified information and that require commercial fishers to report to NMFS the incidental mortality and injury of marine mammals in the course of commercial fishing and comply with certain other requirements. The intended effect of this rule is to provide for a limited exemption of commercial fisheries from the MMPA's moratorium on the taking of marine mammals incidental to commercial fishing activities. NMFS issues a proposed list of fisheries (LOF), categorized according to frequency of incidental serious injury and mortality of marine mammals. Comments are invited on the proposed rule and the proposed LOF.

DATES: Comments on this proposed rule must be received by July 31, 1995. Comments on the proposed LOF must be received by September 14, 1995.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the Environmental Assessment (EA) may be obtained by writing to this address, by telephoning one of the contacts listed below, or by accessing the NMFS ''Home Page'' on the World Wide Web at http://kingfish.ssp.nmfs.gov:80/home-page.html which will be available by June 19, 1995. Comments regarding the burden-hour estimate or any other aspects of the collection of information requirements contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB); Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle or Robyn Angliss, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5301; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Dr. Steve Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Legislative and Regulatory History

Prior to passage of the 1988 amendments to the MMPA (Public Law 92–522), commercial fishers could receive an exemption from the MMPA's general moratorium on the taking of marine mammals by applying for a general permit and certificates of inclusion. The 1988 amendments to the MMPA (Public Law 100–711), added a section 114 to the MMPA that exempts, on an interim basis, commercial fishers who comply with certain registration

and reporting requirements from the general prohibition on taking marine mammals (Interim Exemption for Commercial Fisheries). The purpose of this exemption was to allow NMFS to collect data to be used in setting up a comprehensive management regime governing fisheries interactions with marine mammals. The 1988 amendments did not allow for the taking of California sea otters or the intentional lethal taking of Steller sea lions, cetaceans, or marine mammals from a population stock designated as depleted.

Section 11 of the MMPA Amendments of 1994 (Public Law 103–278) added a new section 118 to the MMPA establishing a new management regime for the taking of marine mammals incidental to commercial fishing operations. In order to provide time for development and implementation, section 15 of the MMPA Amendments of 1994 amended section 114, the interim exemption, to extend it until September 1, 1995, or until superseded by regulations prescribed under section 118, whichever is earlier.

Since it was first passed in 1972, one of the underlying goals of the MMPA has been that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate (section 101(a)(2) of the MMPA). Section 11 of the 1994 amendments to the MMPA reaffirmed this Zero Mortality Rate Goal (ZMRG)(new section 118(b)(1)) and requires NMFS to begin review of each fishery's progress toward the ZMRG within 3 years of enactment (April 30, 1997), and report the results of this review to Congress within 4 years of enactment (April 30, 1998)(new section 118(b)(3)). The amendments specify that all fisheries must attain this goal within 7 years of enactment (April 30, 2001)(new section 118(b)(2)).

Section 10 of the 1994 Amendments adds a new section 117 to the MMPA that requires NMFS to complete stock assessments for every population or stock of marine mammals that occur in the waters under U.S. jurisdiction and to designate strategic stocks based on the level of human-caused mortality likely to reduce or keep the stock below its optimum sustainable population level. Strategic stocks are also those that are listed as endangered or threatened species under the Endangered Species Act (ESA), depleted under the MMPA, or that are declining and likely to be listed as a threatened species under the ESA. Stock assessments must include an analysis of whether the incidental mortality and serious injury of marine mammals from commercial fishing operations is insignificant and is approaching a zero mortality and serious injury rate (e.g., ZMRG). Draft stock assessment reports (SARs) were published in August, 1994 (59 FR 40527). Final SARs are in preparation.

Section 118 of the MMPA requires NMFS to authorize commercial fishers to incidentally, but not intentionally, take marine mammals during the course of commercial fishing operations upon the receipt of specified information and provided certain conditions are met. The regulations being proposed by this notice would implement section 118.

Section 118(a)(5) of the MMPA prohibits the intentional lethal take of any marine mammal in the course of commercial fishing operations except as provided by section 101(c) which authorizes takings, including intentional lethal takings if imminently necessary in self-defense or to save the life of a person in immediate danger and as long as such taking is reported to NMFS within 48 hours (see 60 FR 6036). The 1994 amendments to the MMPA amended section 101(a)(4) of the MMPA to authorize fishers to deter marine mammals from damaging fishing gear, catch or other private property or from endangering personal safety provided such measures do not result in the serious injury or mortality of a marine mammal. Section 101(a)(4) directs NMFS to develop and publish guidelines for use in safely deterring marine mammals and to prohibit the use of deterrence measures determined to have a significant adverse effect on marine mammals. On May 5, 1995, NMFS published proposed guidelines and prohibited measures (60 FR 22345).

Section 4 of the MMPA Amendments of 1994 amended section 101(a)(5) of the MMPA to authorize NMFS to issue permits for the take of marine mammals listed as a threatened species or endangered species under the ESA incidental to commercial fishing operations.

The 1994 Amendments retained the concept of categorizing commercial fisheries into three groups based on the frequency of incidental mortality and serious injury of marine mammals from section 114—the Interim Exemption for Commercial Fisheries. On September 1, 1994, NMFS published a notice of proposed changes to the LOF (59 FR 45263). As required by section 118, that notice classified commercial fisheries by frequency of incidental serious injury and mortality of marine mammals. This classification differed from the classifications under the Interim Exemption in that non-injurious takes, incidental or intentional, such as harassment, were not included in the revised classification criteria. Only incidental serious injuries and mortalities were considered. Also, since intentional lethal takes are prohibited by section 118(a)(5), those fisheries previously classified based only on intentional takes were proposed for reclassification.

Additional information on the regulatory and legislative history of the MMPA prior to the 1994 Amendments appears in the Environmental Assessment prepared for this rule.

Comments and Responses to the Notice of Proposed Changes to the List of Fisheries

Ten comments were received in response to the September 1, 1994, notice of proposed changes to the LOF (59 FR 45263). Comments and information were received from State agencies, commercial fishing organizations, Indian tribes, conservation groups, and other interested parties. Comments on the proposed reclassification of fisheries, classification criteria, treaty Indian fisheries, and related topics are summarized below along with NMFS' responses. These comments were considered in developing this proposed rule.

Comments on the Proposed Changes to the Criteria

Two commenters agreed with the proposed reclassifications, because of the assumption that the prohibition on intentional serious injuries and mortalities would result in a reduced taking of marine mammals. However, three commenters believed that it was inappropriate to reclassify any fisheries based on this assumption until the prohibition was implemented by regulations. One commenter suggested that any attempt to factor unknown levels of illegal activities when classifying fisheries was inappropriate and would be unfair to law-abiding fishers. On March 3, 1995, the prohibition in section 118(a)(5) on intentionally seriously injuring or killing a marine mammal during commercial fishing operations became effective by regulation (60 FR 6036). Previously, under regulations implementing section 114, lethal deterrence measures could be used to protect fishing gear or catch during commercial fishing operations. NMFS has informed owners of vessels currently registered in a Category I or II fishery (respectively, frequent or

occasional incidental mortality and serious injury of marine mammals) of this prohibition by mail. Furthermore, NMFS conducted a public outreach campaign to inform other affected parties (e.g., vessel owners participating in a Category III fishery (a remote likelihood of incidental mortality and serious injury of marine mammals)) through tradepapers, newsletters, and other media. For these reasons, the proposed classification of fisheries in this proposed rule (see List of Fisheries) is based on the assumption that the prohibition on intentional serious injury and mortality will result in a reduced taking of marine mammals. The proposed LOF is also based on the new proposed definitions of ''frequent,'' ''occasional,'' and ''remote'' incidental mortality and serious injury of marine mammals (proposed § 229.2).

Comments on the Definition of a Fishery

For purposes of section 114, NMFS defined fisheries by gear type, geographical area, and target species, in accordance with existing state or Federal management designations. However, for some fisheries this information is unavailable or only partially available. In the notice of proposed changes to the LOF, NMFS suggested that fisheries could be partitioned as necessary to reflect concentrations of marine mammals in certain areas within a fishery, or at certain times of the year in order to address management actions on fishery hot spots, or seasons. Gear type (e.g., mesh size) could also be used to help define a fishery to allow flexibility. Three commenters supported these approaches.

The proposed LOF in this notice would define fisheries based on state or Federal management designations where these designations exist and where practicable. When this information was not available, fisheries are defined based on the 1994 LOF. The 1994 LOF based fishery definitions on the location of the fishery, the gear type used, and sometimes the fish species that are targeted by the fishery. A fishery may be proposed to be grouped with other fisheries if the general location and gear type are similar and if the rates of incidental marine mammal mortality and serious injury are known or suspected to be similar. For instance, the U.S. mid-Atlantic coastal gillnet fishery in the 1994 LOF is composed of many small fisheries that target different fish species seasonally but use the same general type of gear, fish in the same general location, and have a marine mammal take that is suspected to be similar. When additional information on either marine mammal incidental mortality and serious injury or on the fishery are available, fisheries in the proposed LOF may be grouped together or split apart in order to better manage the incidental mortality and serious injury of marine mammals in those fisheries.

New fisheries or fisheries that were new to the proposed LOF were defined based on general location, gear type, and, when applicable, target species.

Comments on Take Estimates

The classification criteria developed to implement the Interim Exemption (expiring section 114) were based on an interaction rate of marine mammals with a randomly selected vessel in a fishery during a 20-day period. In the September 1, 1994 notice of proposed changes to the LOF, NMFS solicited comments and/or suggestions on classification criteria based on the relative impact of a fishery on marine mammal stocks (e.g., percentage of a stock's potential biological removal level (PBR)) or other alternative criteria. Four commenters supported classifying fisheries based on the impact of the annual incidental take of marine mammals from a marine mammal stock relative to the stock's PBR. Two of these commenters suggested that a fishery should be considered to have a frequent taking of marine mammals if the incidental take is 30 percent of a stock's PBR per year, instead of 50 percent of a stock's PBR as was suggested in the notice. They believed that this would be a more conservative approach. One of these commenters suggested that a Category III fishery should be considered to have a remote likelihood of taking if the incidental take from a marine mammal stock is less than or equal to 10 percent of a stock's PBR, instead of the one percent of a stock's PBR as was suggested in the notice. Two commenters supported an approach that categorizes fisheries based on either the number of takes per 20 days or impact of an annual take relative to the stock's PBR.

Commercial fisheries were classified in this proposed LOF based on new definitions of ''frequent,'' ''occasional'', and ''remote'' incidental mortality and serious injury of marine mammals (proposed § 229.2). These new definitions would take into account the relative impact of incidental serious injury and mortality by commercial fisheries on marine mammal stocks. The development and justification for these proposed new definitions are discussed in the ''Comments and Responses to Draft Regulations to Implement Section 118 from Working Sessions and Written Comments'' section of this preamble.

Comments on Treaty Indian Fisheries

In the notice of proposed changes to the LOF, NMFS considered whether the Pacific Northwest treaty Indian tribal fisheries should be excluded from the LOF. Seven commenters objected to the omission of Pacific Northwest Indian tribal fisheries from the LOF. Commenters believed that the requirement to register Treaty Indian Fisheries and categorize them in the LOF provided NMFS with a mechanism to evaluate the impact of these fisheries on marine mammals. Some of the commenters believed that while traditional hunting and fishing rights are covered by native treaty agreement, commercial enterprises are not covered and should be regulated under the MMPA. One commenter believed that the exclusion of the Pacific Northwest treaty Indian tribal fisheries from the LOF was appropriate and also objected to the solicitation of public opinion on this topic.

In a September, 1994 letter to the Northwest Indian Fish Commission, NMFS stated that it had reviewed the relationship of Northwest Indian treaties to the MMPA, and did not find clear evidence that Congress intended to abrogate Indian treaty rights with respect to marine mammals. The letter concluded that proposed tribal harvests of seals and sea lions did not violate the MMPA, noting that neither species was subject to the ESA, and that the healthy status of the stocks would not be affected. The letter urged the tribes to continue to consult with NMFS, and to observe adequate conservation measures.

With respect to the LOF and in keeping with its September, 1994 letter, NMFS has determined that Category I and II treaty Indian tribal fisheries are conducted pursuant to the tribes' treaty rights. For the reasons discussed above, NMFS proposes to not require treaty tribes to register, report or comply with take reduction plans under section 118 of the MMPA. In addition, NMFS has removed treaty fisheries from the LOF proposed in this notice.

Comments on Applicability to Zero Mortality Rate Goal

In the **Federal Register** notice of proposed changes to the LOF, NMFS solicited comments on the development of criteria that could be used in the assessment of a fishery's progress in achieving the ZMRG, and whether the criteria used to classify fisheries may be used to make that assessment. In the June 1994 workshop to develop

standards for SARs, workshop participants suggested that a marine mammal stock that experienced a removal level equal to or less than 10 percent of its PBR could be considered to have an insignificant level of incidental mortality and serious injury approaching zero mortality and serious injury rate because the biological impacts would be negligible (see PBR Workshop Report). Several comments were received on the proposed definition set forth in the workshop report. One commenter agreed that a fishery would have achieved the ZMRG if it took 10 percent or less of a stock's PBR. However, three commenters did not agree because for stocks with a large population size, 10 percent removal could still be a very large number of marine mammals. Even if a fishery achieved this 10 percent goal, these commenters believed the fishery should still try to reduce marine mammal bycatch when possible, regardless of whether the reduction would be necessary to mitigate a biological impact on the stock.

NMFS believes that the ZMRG would be met for a marine mammal stock when the incidental mortality and serious injury from commercial fishing operations are at levels significantly below such stock's PBR so that the incidental mortality and serious injury has a negligible effect on the status of the affected stock. In other words, when the total incidental mortality and serious injury from fisheries has no biological impact, the ZMRG will have been met. NMFS believes that fishers should make every reasonable effort to reduce incidental take below this level. Nevertheless, for the purposes of the MMPA, NMFS is proposing to consider a fishery as having achieved the ZMRG if, collectively with other fisheries, it is responsible for the annual removal of 10 percent or less of any marine mammal stock's PBR level (proposed § 229.2).

Comments and Responses to Draft Regulations To Implement Section 118 From Working Sessions and Written Comments

Informal working sessions to discuss the draft proposed regulations to implement section 118 of the MMPA were held in Silver Spring, MD, on November 30, 1994, and Seattle, WA, on December 2, 1994. Attendees at both sessions included Congressional staff (Silver Spring session only), representatives of conservation groups, members of the fishing community, representatives of state governments, a representative of the Alaska subsistence community (Seattle session only) and NMFS staff. Written comments were also received on the draft proposed regulations to implement section 118. Comments on fishery classification criteria, options for classifying fisheries, and related topics are summarized below along with NMFS' responses. These comments were considered in developing this proposed rule.

Comments on Logbook Data

Some commenters believed that logbook data should be used to classify fisheries. Although logbook information is not and probably will not be reliable enough to determine reliable mortality estimates, the information can be used to determine the minimum mortality of marine mammals in a particular fishery. In addition, qualitative information provided in reports by fishers, such as areas of operation, number of fishers, and relative number of incidental takes, is useful in determining which fisheries need more intensive monitoring programs. When no other information is available for a particular fishery, NMFS will continue to use logbook information collected during the Interim Exemption program to supplement information from the monitoring program (e.g., observer program), and to better understand interactions in those commercial fisheries that are not being observed. Under the proposed rule, fishers will no longer be required to submit logbooks; thus, reports of incidental takes made by fishers will be used to classify fisheries when other information is lacking.

Comments on Criteria When Stock Status or Fishery Take Information Are Lacking

Some commenters believed that fishery classification criteria should not be based on annual takes relative to PBR because in the draft SARs many PBRs were zero (no potential removal level estimated) due to a lack of information on the marine mammal stock in question (e.g., stock size) and this would subject certain fisheries to be classified arbitrarily. Some commenters believed that guidelines must be developed to allow categorization of new fisheries, or fisheries about which little is known. Most commenters supported defaulting new fisheries into Category II.

1. In contrast to the number of zero PBRs in the draft SARs, there are relatively few zero PBRs in the final SARs. Furthermore, fisheries that have annual takes of marine mammals from such stocks generally take more than one species of marine mammal; thus, the fishery can be classified based on a stock with a known PBR.

2. New fisheries for which no information is available on its level of interaction with marine mammals, and where the frequency of interaction can not be determined by analogy (e.g., gear used), would be deemed to be a Category II fishery until the next annual LOF is published which may recategorize them based on new information. NMFS believes that this would provide for the necessary safeguards to ensure that potentially high levels of incidental mortality and serious injury of marine mammals in new fisheries is appropriately monitored.

Comments on Options for Fishery Classification Criteria

Under section 118 of the MMPA, commercial fisheries must be classified in one of the following three categories:

Category I: Frequent incidental mortality and serious injury of marine mammals;

Category II: Occasional incidental mortality and serious injury of marine mammals;

Category III: A remote likelihood of or no known incidental mortality or serious injury of marine mammals.

Because the 1994 amendments to the MMPA did not define ''frequent'', ''occasional'' or ''remote likelihood'', definitions for these terms must be developed in order to classify fisheries. Several options for criteria to classify fisheries were considered and discussed during the working sessions, and are summarized below.

Option 1: Status Quo. This option would retain the definitions of ''frequent'', ''occasional'', and ''remote likelihood'' contained in the regulations to implementing section 114 (54 CFR 219.3). Under this option, ''frequent'' means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. ''Occasional'' means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. ''Remote likelihood'' means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Comments on Option 1. Some commenters stated that the criteria for classifying fisheries under section 118 of the MMPA should be identical to the criteria under section 114. They argued that changing the criteria was not the intent of Congress and might place additional regulatory burden on commercial fishers by increasing the number of fisheries placed in Categories I and II. Furthermore, they were

concerned about what process would be followed for classifying fisheries under a new set of criteria when little or no data exists from which to estimate fishing mortality or PBR. The majority of the commenters however, supported modification of fishery classification criteria to better reflect the effect of commercial fisheries on individual marine mammal stocks. This approach would allow NMFS to place management emphasis on stocks of particular concern. Attendees at the Seattle session constructed a new set of criteria, which is discussed below under Option 2.

Assumptions of Option 1. This approach assumes that NMFS has fairly reliable estimates of rates of serious injuries and mortalities for vessels per 20 days of fishing in each fishery. For fisheries in which NMFS has placed observers, these rates may vary in accuracy, depending on the level of observer coverage applied. For other fisheries, only information submitted in fishers' logbooks are available. Take rates obtained from fishers' logbooks have been found to vary from those reported by observers for the same fishery, with the general tendency to have observed take rates higher than fisher-reported take rates.

Strengths of Option 1. This criteria scheme is useful in identifying fisheries that have relatively high rates of incidental serious injuries and mortalities across a number of marine mammal stocks, regardless of the status of the stocks involved. These fisheries would be classified as Category I or II fisheries.

Weaknesses of Option 1. This approach is problematic in that it does not account for the size of the fishery as a whole (i.e., the number of vessels participating in the fishery), as it relates to impacts on stocks. For instance, two fisheries may have the same serious injury and mortality rate per 20 days of fishing, yet one fishery may have 20 vessels participating and the other may have 3,000 vessels participating. These two fisheries would have significantly different impacts on a particular stock or stocks of marine mammals.

Also, reporting requirements under section 118 require that fishers report only incidents of serious injury and mortality, and not information on fishing effort. This significantly reduces the information available to calculate takes rates per 20 days of fishing. This information would only be accurate for fisheries in which there are observers.

Option 1 could unnecessarily focus management and resources on fisheries (e.g., monitoring programs, take reduction plans, etc.) that do not have a significant impact on marine mammal stocks. It may subject more vessel owners to registration, fees, and observer coverage. Finally, NMFS is concerned that option 1 may be inconsistent with the new section 118 because it does not consider the status of or impact to the marine mammal stocks.

Option 2: Base Criteria on Proportions of the Stock Size and PBR. Under this option, proportions of the best estimated stock size and the PBR for a particular marine mammal stock would be used to classify fisheries in the following manner:

Category I: Annual mortality and serious injury exceeds 0.005 of the best population estimate for cetaceans or 0.01 of the best population estimate for pinnipeds.

Category II: Annual mortality and serious injury is greater than 0.005 of the best population estimate but is greater than 0.01 of the PBR for cetaceans or is less than 0.01 of the best population estimate but greater than 0.1 of the PBR for pinnipeds.

Category III: Annual mortality and serious injury is less than 0.1 of PBR.

Comments on Option 2. There was no support for this option.

Option 3: Proportions of PBR. Under Option 3, a proportion of the PBR for a particular marine mammal would be used to classify fisheries in the following manner:

Category I: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 50 percent of PBR.

Category II: Annual mortality and serious injury is greater than 1 percent and less than 50 percent of PBR.

Category III: Annual mortality and serious injury is less than 1 percent of PBR.

Comments on Option 3. Although there was general support for this type of approach, working session participants were concerned that Option 3 did not account for the collective impacts of all fisheries that interact with a marine mammal stock. Working session attendees also recognized that Option 3 did not account for marine mammal stocks that are subjected to a low level of incidental mortality and injury across a number of fisheries.

Option 4: Proportions of PBR—Two-tiered Approach. This approach is a two-tiered scheme that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock. This approach is based on the annual number of serious injuries and mortalities due to commercial fishing relative to a stock's PBR.

Tier 1: If the annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR of such a stock, then all fisheries interacting with this stock (and no other stocks that do not fit this criteria) would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I: Annual mortality and serious injury of a stock in a given fishery is greater than some percentage of PBR.

Category II: Annual mortality and serious injury is between some percentage and some percentage of PBR.

Category III: Annual mortality and serious injury is less than or equal to some percentage of PBR.

This approach is modeled after the recommendations from the NMFS PBR Workshop held in June 1994 and the working sessions on the draft proposed regulations. The most critical classification threshold is the one between Category II and Category III fisheries because Category III fisheries only have a ''remote likelihood'' of incidental serious injury or mortality of a marine mammal and would not be subject to the more stringent requirements of Category I or II fisheries. The PBR Workshop participants agreed that serious injury and mortality incidental to commercial fishing operations would be insignificant to a stock if such removals were only a small portion (i.e., 10 percent of the PBR) of the stock. Using this rationale, all fisheries which impact a stock would be considered in the determination of whether impacts to that stock are significant (Tier 1). If the total removals from a stock across all fisheries were greater than 10 percent of the PBR for that stock, the fishery would then be categorized according to the criteria in Tier 2.

The term ''some percentage'' under Tier 2 is used, because NMFS considered a number of different percentage options under Option 4 (see EA). The threshold between Category I and II fisheries was set at 50 percent of PBR in this proposed rule. NMFS believes that this is a conservative approach, and in its analysis there were few additional fisheries added to Category I as a result of lowering the dividing line from exceeding PBR to 50 percent of PBR (see EA).

Comments on Option 4. Attendees at the Seattle working session supported the concept of basing fishery classification on takes relative to PBR, and the two-tier system that is presented

here as Option 4 resulted from that session. At the Silver Spring working session, there was also some support for this approach, but others believed that the criteria should remain as they were under section 114.

Assumptions of Option 4. This two-tiered approach assumes that NMFS has fairly accurate information on both the abundance of a stock (in order to calculate PBR) and the current level of incidental serious injury and mortality due to commercial fishing per year. For some cases, both the estimated fishing mortality and the PBRs of marine mammal stocks incidentally taken in that fishery are known with some degree of confidence. In these cases, fishing mortalities and serious injuries were calculated using data collected by observers. If observer data were not available, fishers' logbooks were used to estimate removal levels. However, it is assumed that logbooks provide only a minimum indication of total removal levels. In cases where the PBR for a stock is unknown, any known or inferred level of removal from that stock by a fishery usually warranted placement of that fishery in Category II so that better information could be collected.

For some fisheries, NMFS must use its best estimate of fishing mortality and serious injury based on inferences from similar fishing techniques, gear used, target species, seasons and areas fished, and species and distribution of marine mammals in the area. This method of inferring levels of removals was also used under regulations to implement section 114. In most of the Category III fisheries for which NMFS has no updated information to support a change in classification, the Category III designation was maintained.

Strengths of Option 4. This approach categorizes fisheries based on their impacts on stocks, thereby prompting take reduction teams to be formed first for those stocks of greatest concern. Option 4 would alleviate the burden of the management program for those fisheries that do not significantly interact with marine mammal stocks (Category III), because Category III vessel owners would not be required to register, pay fees, or take aboard an observer. Option 4 would focus management resources on those commercial fisheries that have impacts to marine mammals that are more than negligible. Furthermore, this approach would allow for the classification of fisheries that have only rare occurrences of serious injuries and mortalities as Category II, if the stock subject to removal has a very low PBR level and could be greatly impacted by even a low level of taking.

Weaknesses of Option 4. This approach does not specifically address fisheries that have a high frequency of marine mammal serious injuries and mortalities across several stocks. These could be classified as either Category I, II, or III depending on the stocks with which they interact. This may affect the prioritization of take reduction team formation, although, eventually, take reduction teams must be formed for marine mammal stocks that have significant incidental interactions with Category I or II fisheries.

Criteria for Categorizing Fisheries

NMFS believes that the 1994 amendments to the MMPA emphasized management of the interaction between commercial fisheries and marine mammals on a stock-specific basis. For this reason, NMFS proposes to use Option 4 (discussed above) and the proposed definitions of frequent, occasional, and remote (proposed § 229.2) were used to classify commercial fisheries. This requires the previous proposed changes to the LOF to be revised and to be reproposed by this notice.

Zero Mortality Rate Goal

NMFS proposes to consider a fishery as having reached the ZMRG when collectively with other fisheries, it is responsible for the annual removal of (1) 10 percent or less of any marine mammal stock's PBR, or (2) more than 10 percent of any marine mammal stock's PBR, yet the fishery by itself is responsible for the annual removal of one percent or less of that stock's PBR (proposed § 229.2).

It is not possible to determine whether a level of mortality to a declining stock of marine mammals is insignificant simply by applying a mechanistic definition such as the one set forth above. Therefore, fisheries that kill or seriously injure declining, depleted, threatened, or endangered stocks of marine mammals would have to be examined separately to determine whether the incidental take is insignificant.

Another option for defining the ZMRG draws from the 1981 amendments to the MMPA that addressed reducing mortality of small cetaceans in the yellow-fin tuna fishery in the Eastern Tropical Pacific Ocean (ETP). In 1981, Congress expressed it was not its intent to shut down the tuna fishery via the MMPA and that the ZMRG could be achieved in that fishery by requiring the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable (H.R. Rep. 228, 97th Cong., 1st Sess. 13 (Sept. 16, 1981)). If a similar rationale were adopted for other fisheries, the following might be an option for defining the ZMRG: ''Zero Mortality Rate Goal means the reduction of the annual number of incidental mortalities and serious injuries in each fishery to insignificant levels approaching a zero mortality and serious injury rate; at a minimum, this requires that the rate of incidental mortality and serious injury is at the lowest level that is technologically and economically practicable.''

A problem with such an adopting such an approach when implementing section 118 of the MMPA, however, is that, while Congress adopted a ''technologically and economically practicable'' approach for the ETP yellowfin tuna fishery in 1981, it effectively abandoned that approach in 1984 when it established an annual statutory quota of 20,500 for that fishery. Congress reduced the quota again in 1992 when through the International Dolphin Conservation Act; there, it added a new section 306 to the MMPA in which the quota was reduced to 1000 for 1992, and 800 from January 1, 1993 to March 1, 1994. It also required that, for each year after 1992, dolphin mortality must decrease by a ''statistically significant amount.'' Under these new requirements, the ETP yellowfin tuna fishery was forced to stop fishing in February of 1994 because it was approaching a take of 114 dolphins, which was statistically significantly less than the 115 it took in 1993. These statutory limits on dolphin mortality clearly indicate that, even for the ETP yellowfin tuna fishery, the 1981 approach using ''technologically and economically practicable'' methods a questionable method of achieving the ZMRG.

Some commenters proposed a definition where ''zero equals zero'' and believed that fisheries should be required to reduce their incidental mortality and serious injury of marine mammals to zero. There are two main problems with this approach: (1) It does not consider a ''rate'' of take as required by the ZMRG, and (2) this option could result in severe curtailment or complete cessation of fishing operations, even for fisheries that had only a remote likelihood of marine mammal incidental take.

In the proposed rule, the definition of ZMRG is proposed to be based on 10 percent of PBR. Comments on the preferred definition and the options presented are specifically encouraged.

Commercial Fishing Authorization

As required by the provisions of section 118(c) of the MMPA, under the proposed rule, in order for persons to lawfully take a marine mammal while engaged in a Category I or II fishery, the owner of a vessel or an authorized representative thereof would have to register with NMFS for and obtain an Authorization Certificate and decal, display the decal on the vessel, possess physical evidence of the authorization on the vessel, and report all incidental mortality and injury of marine mammals to NMFS. Vessels engaged in a Category I or II fishery would be required to carry aboard an observer if requested by NMFS. In the case of a nonvessel fishery, the owner of the fishing gear, or an authorized representative thereof, would have to register with NMFS for and obtain an Authorization Certificate and decal and attach the decal to the Authorization Certificate and the Certificate or a copy thereof would have to be in the possession of the person in charge of the fishing operations.

Owners of vessels engaged only in Category III fisheries would not be required to register with NMFS for or obtain an Authorization Certificate or decal to incidentally take marine mammals as a result of their fishing operations; however, they would be required to report all marine mammals incidentally killed or injured. Owners of vessels in Category I or II fisheries would be required to comply with any general regulations, conditions of Authorization Certificates issued to the vessel owner, and emergency or take reduction plan regulations published under the authority of section 118; owners of vessels in Category III fisheries would be required to comply with emergency or take reduction plan regulations and reporting requirements.

As specified in section 118(c)(2)(B) of the MMPA, the authorization for commercial fisheries applies only to U.S. commercial fishing vessels including licensed commercial passenger fishing vessels (e.g., charter and party boats) or to those foreign vessels with valid fishing permits issued under section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act). As specified in section 118(a)(3), authorizations under section 118 are not applicable to vessels fishing in the yellowfin tuna purse seine fishery in the eastern tropical Pacific. Although registration of vessels in Category I and II fisheries under the MMPA is necessary to lawfully incidentally take a marine mammal, not registering under the MMPA would not prevent a fisher from fishing. Fishing is governed by a variety of mechanisms such as Federal or state laws and their respective implementing regulations (including regulations implementing regional fishery management plans).

The authorization for commercial fisheries does not apply to Northwest Treaty Tribal fishers exercising treaty rights.

Section 118 of the MMPA does not include authority to incidentally take southern (California) sea otters (*Enhydra lutris nereis*). This subspecies historically ranged along the west coast of the United States, but currently is found only along the central California coast and San Nicolas Island, CA. Section 118 of the MMPA does not supersede or otherwise affect the provisions of Public Law 99–625, governing the translocation of southern sea otters to San Nicolas Island for research and recovery purposes. Within special zones established for this experimental population, certain restrictions on incidental taking under the MMPA do not apply. (See 50 CFR 17.84(d) for a description of these special zones and activities that can be lawfully conducted within these zones.)

Issuance of Authorization Certificates for Category I and II Fisheries

Registration Process

As required by section 118(c) of the MMPA, under the proposed regulations, a vessel owner (or authorized representative) would have to register to obtain an Authorization Certificate and decal for each vessel that will engage in a Category I or II fishery. The initial registration would cover 1996. After that, registrations to renew certificates would be required each calendar year. Those owners of vessels holding valid Exemption Certificates under section 114 would be deemed to have registered under section 118 through December 31, 1995.

Registration forms, outlining the required information, would be available from NMFS (proposed § 229.4(c)). However, if the granting and administration of authorizations is integrated and coordinated with an existing fishery license, registration, or related program operated by an entity other than NMFS, registrations forms will be available from those program offices. A notice will be published in the **Federal Register** indicating where to register and other means will also be used to notify fishers of the change (e.g., MMPA Bulletin, mailings to previously registered fishers, etc).

One registration per vessel would be required and would cover all Category I and II fisheries in which the vessel participates during the calendar year. The registrant would be requested to send the first page of the registration form to one of the NMFS offices listed in proposed section § 229.4; the second page should be retained by the registrant and would serve as an indication of registration until an Authorization Certificate is issued.

For annual renewals, registration forms, containing the information on file with NMFS, would be sent to existing Authorization Certificate holders prior to the beginning of the year. Vessel owners would be required to make any necessary corrections or updates and sign and return the form to NMFS. A signed registration renewal form would have to be submitted to NMFS prior to any incidental taking of a marine mammal by that vessel owner in a Category I or II fishery.

The term ''vessel owners'' (proposed § 229.2), in addition to owners of commercial fishing vessels, would be defined to include owners of fixed or other fishing gear that is used in a ''nonvessel fishery.'' A ''nonvessel fishery'' would mean a commercial fishing operation that uses fixed or other fishing gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch and pen fisheries. Owners of such gear would be subject to the same requirements and restrictions as owners of fishing vessels or fish processing vessels operating in a commercial fishery.

A registration fee may be required to accompany each registration or request for renewal if NMFS is issuing the Authorization Certificates.

Under the legislation, NMFS is authorized to establish a fee to cover the administrative cost of granting Authorization Certificates and renewals, however, the amount that would be required has not been determined at this time. ''Vessel owners'' in ''nonvessel fisheries'' may be required to submit one fee to register all gear owned. The fees collected in connection with the authorization system would be available to NMFS to cover the administrative costs and will be determined annually and published in the LOF.

Issuing Procedures

After submission of a completed registration form and the required fee, an Authorization Certificate and a vessel decal or other physical evidence would be issued to the vessel owner for each vessel intending to engage in a Category I or II fishery. The initial Certificate and decal would be valid for calendar year 1996. After that, Certificate renewals and decals would be issued each year after receipt of an updated registration,

required fee, and statement (yes/no) regarding whether any marine mammals were incidentally killed or injured during the previous calendar year covering all registered Category I or II fisheries.

Decals or other physical evidence would be required to be displayed as proof of current registration. In those instances where NMFS is successful in incorporating the registration process with existing licensing systems, fishers will be notified of the accepted ''physical evidence'' requirements.

A replacement decal would be issued, if requested, to replace a lost or damaged decal. In nonvessel fisheries, the decal would have to be affixed to the Certificate. Annual decals would be issued along with the Certificates in subsequent years.

The Authorization Certificate or a copy thereof would have to be on board the vessel while it is operating in a Category I or II fishery, or, in the case of a nonvessel fishery, a copy of the Certificate would have to be in the possession of the person in charge of the fishing operations. A copy of the Certificate would have to be made available upon request to any state or Federal government official authorized to enforce the provisions of the MMPA or to any designated agent of NMFS.

Suspension or Revocation of Authorization Certificates

Under the proposed regulations, NMFS could suspend or revoke a Certificate or deny a Certificate renewal for any vessel if the Certificate holder (1) fails to report as required under proposed § 229.6, or (2) fails to take aboard an observer in a Category I or II fishery as required under proposed § 229.7, if requested. In addition, NMFS could revoke or suspend a Certificate for any vessel that fails to comply with other terms and conditions of the Authorization Certificate or the regulations governing the incidental taking of marine mammals during commercial operations under this section. NMFS could suspend or revoke a Certificate or could deny a Certificate renewal for any vessel which fails to comply with a take reduction plan or emergency regulations under this section. The suspension, revocation or denial could occur without notice or opportunity for hearing in the case of failure to submit required reports. Other actions would be subject to NOAA's civil procedures contained in subpart D of 15 CFR part 904. Previous failure to comply with the requirements of section 114 of the MMPA would not bar authorization under this section for an owner who complies with the requirements of this section.

Requirements for Category III Fisheries

Under section 118(c) of the MMPA and these proposed regulations, owners of vessels engaged only in Category III fisheries are not required to register with NMFS or to obtain an Authorization Certificate to legally incidentally take marine mammals during commercial fishing operations. However, they would be required to report all incidental mortality and injury and make all reasonable efforts to release animals unharmed. Where necessary to address immediate and adverse impacts to marine mammal stocks, NMFS could place observers aboard Category III vessels if there is reason to believe that such vessels may be causing the incidental mortality and serious injury to such a stock.

Reporting Requirements

As required by section 118(e) of the MMPA and the proposed regulations, vessel owners or operators engaged in Category I, II, or III fisheries would have to report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters or appropriate NMFS Regional Office. NMFS proposes to define an ''injury'' (proposed § 229.2) as a wound or other physical harm. Any animal that requires assistance to escape from entanglement in fishing gear would also be considered injured and would have to be reported.

Reports would have to be submitted by mail or other means such as FAX within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred. The ''end of a fishing trip'' (proposed § 229.2) would mean the time of a vessels' return to port after a fishing trip. NMFS would provide a standard postage-paid form and instructions for recording information for this purpose. If a fisher participates in more than one fishery during a single fishing trip, a separate report would be required to be submitted for each such fishery. Report forms would require information on: The fishery, gear type and fish species involved; the marine mammal species (or description of the animal(s) if species is not known), number, date, and location of marine mammal incidental takes and whether an injury or mortality occurred. Failure to report incidental mortality or injury of marine mammals during the course of commercial fishing operations would result in suspension or revocation of the Authorization Certificate and denial of Authorization Certificate renewal requests until the vessel owner complies with reporting requirements of proposed § 229.6 of this part.

Monitoring Program

As required by section 118(d) of the MMPA, NMFS would establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. A ''serious injury'' (proposed § 229.2) would be defined as any injury of a marine mammal during a commercial fishing operation that will likely result in mortality of that marine mammal. The purposes of the monitoring program as specified in section 118(d)(1) of the MMPA are to: (1) Obtain statistically reliable estimates of incidental mortality and serious injury of marine mammals; (2) determine the reliability of reports of incidental mortality and injury of marine mammals obtained from fishers' reports; and (3) identify changes in fishing methods or technology that may increase or decrease incidental mortality or serious injury of marine mammals. The monitoring program would use information from observer programs, fishers' reports, and marine mammal stranding reports.

Observer Program

Section 118(d)(2) authorizes NMFS to place observers aboard vessels, as necessary, to monitor incidental mortality and serious injury of marine mammals during commercial fishing operations for vessels engaged in Category I or II fisheries. Under the proposed regulations, the owner of a vessel engaged in a Category I or II fishery would be required to take aboard an observer if requested by NMFS or a contractor of NMFS, to do so. The extent of observer coverage would be based on the ability to obtain statistically reliable estimates of incidental mortality and serious injury in each individual fishery and could include up to 100 percent observer coverage of a fishery. The specific design of the observer program, including how long an observer would be placed on a particular vessel, would vary among fisheries.

As required by section 118(d)(4), the highest priority for allocating observers among fisheries would be for those commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered or threatened species under the ESA. To the extent practicable, the next highest priority for allocation would be for those commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks. A ''strategic stock'' is a

marine mammal stock (1) for which the level of human-caused mortality is greater than the potential biological removal, or (2) which is declining and is likely to be listed under the ESA, or (3) which is listed under the ESA, or (4) which is designated as depleted under the MMPA (proposed § 229.2). The ''potential biological removal level'' (proposed § 229.2) would mean the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimal sustainable population. To the extent practicable, the third highest priority for allocation would be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury relative to the stock size is uncertain.

As required by section 118(d)(3), when determining the distribution of observers among fisheries and vessels within a fishery, NMFS would be guided by the following standards: (1) The requirement to obtain statistically reliable information; (2) the requirement that the assignment of observers be fair and equitable among fisheries and among vessels within a fishery; (3) the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and (4) to the extent practicable, the need to minimize costs and avoid duplication.

Under section 118(d)(6) of the MMPA, NMFS is not required to place an observer on a Category I or II vessel if (1) statistically reliable information can be obtained from observers on processing vessels to which Category I or II harvesting vessels deliver a catch that has not been taken on board the harvesting vessel, (2) the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized, or (3) an observer is not available.

The first exception addresses the situation in which Category I or II vessel catcher/harvester boats do not bring the catch on board, but deliver the fish directly to a floating processor on which an observer is placed. For example, observers on foreign vessels in over-the-side joint ventures may satisfy the observer requirements, and observers would not be needed on the catcher/harvester boats.

With respect to whether a vessel is adequate for taking an observer aboard, NMFS would make the necessary determinations on a case-by-case basis. Examples of situations in which observers would not be required or if a vessel is too small to carry (or house) an observer safely, if an observer would displace a crew member, or if fishing gear or the vessel could not be operated safely because of the presence of an observer.

The exception for unavailability of observers would include situations where NMFS may have inadequate funds to cover a full observer program or may not be able to employ or contract for sufficient qualified personnel to fully staff an observer program. To minimize these situations, NMFS would use observers, to the maximum extent possible, placed under other authorities, such as the Magnuson Act, to collect marine mammal interaction information, in addition to their other duties, to fulfill the observer requirements under the MMPA.

Vessel owners, operators, and crew members would be required to cooperate with observers and to provide information, such as vessel location, needed to meet the observers' responsibilities. If feasible and if required by the observer, marine mammals killed during the fishing operation which are readily accessible to crew members would have to be brought on board the vessel for biological processing and could be retained by NMFS. NMFS recognizes that for many smaller vessels, this will not be feasible and, therefore, would not be required. As authorized by section 118(d)(2), observers could, among other tasks (1) record incidental mortality and serious injury, or bycatch of other nontarget species; (2) record numbers of marine mammals sighted; and (3) perform other scientific investigations, including photographing incidental takes.

Although the primary purpose of the observer program is to collect data on incidental take of marine mammals, observers would not be limited to this activity. Regional fishery management councils, states or other Federal agencies could request NMFS to collect other scientific or biological information needed in their resource conservation and management programs, such as fishery resource and sea bird data. NMFS would require the observer to collect the requested additional information unless NMFS found in writing, and after opportunity for public comment, that the collection of the requested information would interfere with the collection of information related to marine mammals.

Pursuant to section 118(d)(7) of the MMPA, NMFS could place an observer aboard a vessel engaged in a Category III fishery with the consent with the vessel owner or pursuant to section 118(g)(1)(C), if NMFS believed that the incidental mortality or serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact of a species or stock listed under the ESA and has prescribed emergency regulations under proposed § 229.9(a)(3). If an observer was placed on a vessel engaged in a Category III fishery, the vessel owner, operator, and crew members would have to comply with the requirements under § 229.9(e).

NMFS, in coordination with Federal and state scientists and personnel experienced in fishery observer programs, is designing its observer program to obtain statistically reliable information on the species and number of marine mammals incidentally killed or seriously injured in as many Category I and II fisheries as possible. The level of observer coverage and whether an alternative program would be used would be determined for each Category I and II fishery. These determinations would be based on the size and nature of each fishery and on the resources available for these programs. NMFS will try to make the best use of available resources by using existing research programs, programs operated by the states or other authorities, or alternative programs where statistically reliable information can be obtained at lower cost.

Alternative Observer Program

As authorized by section 118(d)(5) of the MMPA, if observers could not be placed on Category I or II vessels at the necessary level, NMFS could establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally killed or seriously injured in the course of commercial fishing operations. The alternative observer program could include, but would not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore. Provided sufficient resources were available, an alternative program could also be established in any fishery for which reliable information was not otherwise obtainable.

Stranding Information

The NMFS may use marine mammal stranding data to monitor incidental mortality and serious injury of marine mammals from commercial fishing operations to supplement the information obtained from the observer program and fishers' reports. Intentional Taking of Marine Mammals

Section 118(a)(5) of the MMPA prohibits the intentional lethal take of any marine mammal in the course of commercial fishing operations in Category I, II, or III fisheries except as proved by section 101(c), which authorizes takings, including intentional lethal takings, if imminently necessary in self-defense or to save the life of a person in immediate danger and such taking is reported to NMFS within 48 hours. On February 1, 1995, NMFS published a final rule implementing this section of the MMPA (60 FR 6036). That rule, which became effective on March 3, 1995, requires that a report be made to the appropriate NMFS Regional Office within 48 hours if a marine mammal is killed by a fisher or a member of the general public in self-defense or in order to save the life of another person. If a report is not submitted, the person responsible for the take, whether a fisher or a member of the general public, will be subject to the penalties which have been authorized by the MMPA for illegal takes. This proposed rule incorporates the provisions of that final rule and would supersede it.

When necessary to deter a marine mammal from damaging gear, catch, or private property, or from endangering personal safety, fishers in Category I, II, or III fisheries may do so provided they follow the guidelines for safely deterring marine mammals found at proposed 50 CFR § 216.29(c) and do not use any measures prohibited under proposed 50 CFR 216.29(d). These sections were proposed on May 5, 1995 (60 FR 22345) and are subject to change based on the comments received.

Definitions of Incidental Taking and Incidental Mortality

The proposed definition of incidental, but not intentional, take is the nonintentional or accidental taking of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action. The proposed definition of incidental mortality is the non-intentional or accidental death of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action. The phrase ''incidental, but not intentional'' is intended to mean accidental taking. The words 'not intentional' should not be read to mean that persons who 'know' that there is some possibility of taking marine mammals incidental to commercial fishing operations or other specified activities are precluded from doing so.

Prohibition on Discarding Fishing Gear

Proposed section 229.3(f) would prohibit the discarding of fishing gear at sea. The ingestion of, or entanglement in, discarded fishing gear by marine mammals often causes them serious injury or mortality. It is not necessary for the conduct of fishing operations to discard fishing gear at sea. Gear can be stowed and safely discarded in port. Accordingly, it is proposed to prohibit the discard of fishing gear at sea, because such discards are not necessary to fishing operations and prohibiting such discards would decrease the number of serious injuries and mortalities to marine mammals caused by fishing operations consistent with the ZMRG.

Publication of List of Fisheries

Section 118(c) of the MMPA requires NMFS to publish a LOF, along with the marine mammals and number of vessels or persons involved in each such fishery, for those fisheries that have:

Category I: A frequent incidental mortality and serious injury of marine mammals;

Category II: An occasional incidental mortality and serious injury of marine mammals; or

Category III: A remote likelihood, or no known incidental mortality or serious injury of marine mammals.

A notice proposing revisions to the last LOF would be published in the **Federal Register** on or about July 1 of each year for the purpose of receiving public comment. A final LOF would be published on or about October 1 of each year which would become effective January 1 of the next calendar year. The proposed and final LOF would be developed according to the definitions for Category I, II, and III fisheries under § 229.2. Each LOF would list the marine mammals that interact with the fisheries, the approximate number of vessels or persons actively involved in each fishery, and would set forth the registration fee. A revised LOF may be published at any time after notice and opportunity for public comment.

Proposed List of Fisheries

The proposed regulations would establish the following fishery classification criteria:

Tier 1: If the annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR of such a stock, then all fisheries interacting with this stock (and no other stocks that do not fit this criteria) would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of PBR.

Category II: Annual mortality and serious injury is greater than 1 percent and less than 50 percent of PBR.

Category III: Annual mortality and serious injury is less than or equal to 1 percent of PBR.

These criteria and information on commercial fisheries were used to develop the proposed LOF contained in this notice based on the following prioritization scheme:

1. Observer data extrapolated to estimate a total annual kill for that fishery was used where available, after which the proposed classification criteria were applied for Category I, II and III fisheries in order to classify the fisheries. The source of the observer data is provided in the description of how the fishery was classified.

2. Logbook data were used if observer data was unavailable. Only those animals recorded as ''injured in gear'' and ''killed in gear'' were included. Those animals harassed, injured, or killed by deterrence were not included in the data used to categorize the fisheries. Logbook data were summarized from the F/PR database. An estimated total annual kill is not calculated; fisheries are categorized based on the reported injuries and mortalities. When logbook data were questionable, the NMFS evaluated the reliability of the data.

3. When neither observer data nor logbook data were available, fisher's reports of marine mammal takes were used to classify the fisheries.

4. Evidence of fishery interactions can sometimes be gleaned by examination of stranded marine mammals. When the cause of death of a particular stranded marine mammal could be attributed to a specific fishery, this information was used to classify some fisheries.

5. If no information was available on which to base the classification of a particular fishery, the fishery was classified based on analogy with other fisheries occurring in similar locations or having similar gear types or methods for which observer or logbook information exists. When classifying fisheries, analogies were not made to fisheries which were classified based on fisher's reports or stranding data.

6. If available information is deemed by NMFS to be highly questionable, the fishery may be categorized based on the best information available, which includes but is not limited to historical patterns of marine mammal takes and expected magnitude of takes resulting from changes in fishery effort.

Justification for Categorization of Commercial Fisheries

The following are justifications for the proposed categorization of commercial fisheries into Category I, II, or III based on the proposed classification scheme. Justifications are presented for only those fisheries proposed to be placed in Category I or II and those fisheries in Category III for which observer, logbook, stranding or other information exist. Unless otherwise specified, fisheries classified into Category I or II have passed the Tier I criteria; thus, most justifications for placing fisheries detail only the information used to classify the fishery under the Tier 2 criteria. Tables 1 and 2 presents the proposed LOF.

Commercial Fisheries in the Pacific Ocean

Category I

California angel shark/halibut and other species large mesh (greater than 3.5 in) set gill net fishery. For the purpose of the 1994 LOF, this fishery was included with the California drift gillnet fishery under the general fishery definition ''California set and drift gillnet fisheries that use a stretched mesh size of greater than 3.5 inches''. This fishery was renamed in order to remain consistent with the name under which observer data is collected and because the name is more descriptive of the fishery.

This fishery is proposed to be placed in Category I, because observer data averaged across the years 1991 to 1993 indicate that the annual take of the central Californian stock of harbor porpoise (31 animals) is 91 percent of the PBR for this stock (34 animals).

California, Oregon thresher shark/swordfish/blue shark (blue shark in Oregon only) drift gill net fishery. This fishery was included with the California angel shark/halibut set gillnet fishery in the 1994 LOF and was called the ''California set and drift gillnet fisheries that use a stretched mesh size of greater than 3.5 inches''. This fishery was renamed to be more specific and to include the northward expansion of the fishery into Oregon and a possible future expansion into Washington. Observer data collected in the fishery both in California and in Oregon indicates that the incidental take of marine mammals occurs throughout the fishery. In addition, observer data collected in the late 1980's during an experimental shark fishery in Oregon and Washington using comparable gear also showed incidental takes of marine mammals for the fishery at that time (Stick and Hreha, 1989).

This fishery is proposed to be placed in Category I, because observer data provided by the NMFS Southwest Fisheries Science Center averaged across the years 1991 to 1993 indicate that the annual take of the Pacific sperm whale stock (15 animals) is greater than the PBR for this stock (1 animal).

Category II

Alaska Prince William Sound salmon drift gillnet. Categorization of this fishery is based on observer data. The Prince William Sound drift gillnet (Eshamy, Coghill and Unawik districts) and Copper River and Bering River salmon drift gillnet are combined in this fishery. Because total known harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of the stock's PBR, and the known harbor porpoise mortality and serious injury level for this fishery is 20 animals per year (8.1 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Peninsula/Aleutians salmon drift gillnet fishery. Categorization of this fishery is based on observer data. The South Unimak (including False Pass and Unimak Pass) drift gillnet and the Alaska Peninsula (other than South Unimak) drift gillnet fisheries are combined in this fishery. Although total known Dall's porpoise mortality and serious injury levels across all fisheries do not exceed 10 percent of the stock's PBR with currently available information, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for this stock, and available data suggest that levels of mortality and serious injury may exceed 10 percent of this stock's PBR if observer information were available. This, combined with the fact that known Dall's porpoise mortality and serious injury level of 28/year (1.8 percent of PBR) suggests that this fishery should be placed in Category II.

Southeast Alaska salmon drift gillnet fishery. Categorization of this fishery is based on observer and strandings data. Because total known humpback whale and harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of each stock's PBR, and the known harbor porpoise mortality and serious injury level for this fishery is 3 animals per year (1.3 percent of PBR) and humpback mortality and serious injury level for this fishery is 0.13 animals per year (4.6 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Cook Inlet salmon drift gillnet. Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available. Similarly, low levels of marine mammals have been documented for this fishery, and available data suggest that levels of marine mammal mortality and serious injury in this fishery are expected to be similar to levels of other drift gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Yakutat salmon set gillnet fishery. Categorization of this fishery is based on logbook data. Although total known harbor porpoise mortality and serious injury levels across all fisheries do not exceed 10 percent of this stock's PBR with currently available information, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for this stock, and available data suggest that levels of mortality and serious injury may exceed 10 percent of this stock's PBR if observer information were available. This, combined with the fact that known harbor seal mortality and serious injury level of 30/year (1.5 percent of PBR) suggests that this fishery should be placed in Category II.

Alaska Cook Inlet salmon set gillnet. Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries has not been at a level high enough to accurately determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available, especially for harbor porpoise. Similarly, low levels of marine mammals have been documented for this fishery, and available data suggest that levels of marine mammal mortality and serious injury in this fishery would be expected to be similar to levels of

other set gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Kodiak salmon set gillnet. Categorization of this fishery is based on logbook data. Because total known harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known harbor porpoise mortality and serious injury level for this fishery is 4 animals per year (1.6 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Peninsula/Aleutians salmon set gillnet (includes Atka and Amlia Islands). Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available, especially for harbor porpoise. Similarly, though low levels of marine mammal mortalities and serious injuries have been documented for this fishery, available data suggest that levels of mortality and serious injury in this fishery would be expected to be similar to levels of other set gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Bristol Bay salmon drift gillnet. Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available, especially for harbor porpoise, harbor seals and Steller sea lions. Similarly, though low levels of marine mammal mortalities and serious injuries have been documented for this fishery, available data suggest that levels of mortality and serious injury in this fishery would be expected to be similar to levels of other set gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Bristol Bay salmon set gillnet. Categorization of this fishery is based on information from logbooks. This fishery is proposed to be placed in Category II based on an occasional take of marine mammals (0.5 Bristol Bay stock of beluga whales per year). Because the take relative to PBR is 2 percent, which is greater than 1 percent and less than 50 percent, this fishery is proposed to be placed in Category II.

Alaska Metlakatla/Annette Island salmon drift gillnet. This fishery is separated from the Southeast drift gillnet fishery only for purposes of registration. It is a tribal fishery and is thus exempt from the registration fee. For categorization purposes, it is considered the same as the Southeast drift gillnet fishery and is thus proposed to be placed in Category II.

Washington Puget Sound Region salmon drift gillnet fishery (includes inland waters south of U.S.-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded). The name of this fishery has been modified from the name in the 1994 LOF in order to exclude set gillnet gear and commercial steelhead fishing since these fisheries are conducted only by treaty Indian fishers. Also, the name change clarifies that the regulations governing incidental take of marine mammals in fisheries do not apply to tribal members exercising treaty Indian fishing rights.

Categorization of this fishery is based on information from observer programs and logbooks. This fishery experiences an occasional take of marine mammals (50 harbor seals from the Washington inland waters stock were reported in logbooks each year). Because the take relative to PBR is 6 percent, which is greater than 1 percent and less than 50 percent, this fishery is proposed to be placed in Category II. The observer programs conducted in 1993 and 1994 documented a few incidental takes of harbor seals, harbor porpoise and Dall's porpoise; however, the extrapolated estimates of take for the non-Indian fishery are not yet available.

California anchovy, mackerel, tuna purse seine. Categorization of this fishery is based on information from logbooks. This fishery experiences an occasional take of marine mammals (0.33 bottlenose dolphins per year). Because the take relative to PBR is 2 percent, which is greater than 1 percent and less than 50 percent, this fishery is proposed to be placed in Category II.

Alaska Southeast salmon purse seine. This fishery was included under the general title ''Alaska salmon/herring beach and purse seine'' in the 1994 LOF. Categorization of this fishery is based on Category III reports. Because total known humpback whale mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known humpback whale mortality and serious injury level for this fishery is 0.4 animals per year (14.3 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Bering Sea and Aleutian Islands groundfish trawl. Categorization of this fishery is based on observer data. Because total known killer whale mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known killer whale mortality and serious injury level for this fishery is 1 animal (0.8 animals) per year (8 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska pair trawl—new fishery. Because this is a new fishery to the region, no information is available to make a determination on expected levels of marine mammal mortalities and serious injuries in this fishery. Analogy cannot be drawn with the Atlantic tuna swordfish pair trawl, as target species and marine mammal species it might interact with are too dissimilar. However, because this is a new fishery for which no information is available, this fishery is proposed to be placed in Category II.

Oregon swordfish/blue shark surface longline fishery—new fishery. Categorization of this fishery is based on analogy with observed pelagic longline fisheries in the Atlantic Ocean. Based on observer data, the Atlantic Ocean pelagic longline fishery for swordfish and tuna have at least an occasional incidental serious injury and mortality of marine mammals. Accordingly, this fishery is proposed to be placed in Category II.

Alaska southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters). The name of this fishery has been modified from the 1994 LOF name to specify that this fishery occurs in Federal waters. Categorization of this fishery is based on observer data. Because total known killer whale mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known killer whale mortality and serious injury level for this fishery is 0.25 animals per year (2.5 percent of PBR), this fishery is proposed to remain in Category II.

Category III

Alaska Kuskokwim, Yukon, Norton Sound, Kotzebue salmon set/drift gillnet. The name of this fishery has been changed from the 1994 LOF designation ''Alaska Kuskokwim/Yukon/Norton Sound/Kotzebue salmon gillnets'' to specify that both set and drift gillnets are used in this fishery. Although this fishery is expected to have occasional interactions with marine mammals, interactions usually result in directed takes for subsistence purposes. Therefore, this fishery is proposed to remain in Category III.

Alaska state waters sablefish longline/set line. This fishery is classified based on logbook data from the Alaska Prince William Sound longline/set line fishery. The fishery description has been expanded from the 1994 LOF to include all sablefish longline/set line fisheries in Alaska state waters. There were no records of incidental takes in logbook reports from this fishery. This fishery is proposed to be reclassified into Category III from Category II based on the prohibition of intentional lethal takes.

Alaska Prince William Sound set gill net. Categorization of this fishery is based on observer data. Because marine mammal mortality and serious injury levels approaching 1 percent of any stocks' PBR are not expected, this fishery is proposed to be reclassified from Category II to Category III.

Washington Willapa Bay salmon drift gillnet. This fishery is classified based on observer data extrapolated to estimate the total annual kill. There were no incidental serious injuries or mortalities in the Willapa Bay fishery in 1991 or 1992; thus, the fishery is proposed to remain in Category III.

Washington Grays Harbor (includes rivers, estuaries, etc.) drift gillnet. This fishery is classified based on observer data extrapolated to estimate the total annual kill. There is a low level of incidental mortality and serious injury of harbor seals in this fishery (under 1 percent of PBR). This fishery is proposed to be placed in Category III.

Washington, Oregon lower Columbia River (includes tributaries) drift gillnet. Categorization of this fishery is based on data from observer programs and current and anticipated future low fishing effort in the winter fishing season. During 3 years of observations in this fishery with observer coverage averaging from 3.0 percent to 9.5 percent each year, all but one of the observed harbor seal mortalities were documented in the winter season. The extrapolated annual mortality of harbor seals in this fishery from 1991 to 1993 was 233 seals in 1991 (all during the winter season), 192 seals in 1992 (180 in the winter season and 12 in the fall), and 11 seals in 1993 (all during the winter season). Although the estimated annual takes of harbor seals in 1991 and 1992 could justify placing this fishery in Category II, reduced fishing seasons in recent years and reduced fishing effort (due to restrictions on the fishery to minimize impacts on ESA listed Snake River chinook salmon) are unlikely to result in the levels of harbor seal mortality observed in 1991 and 1992. The winter season of 1993, when an estimated total of only 11 harbor seals were taken, was restricted due to ESA considerations and resulted in chinook landings of 446 fish in 1993 in contrast with landings of 2,692 fish in 1991 and 1,537 landings in 1992. The winter season was closed in 1994. Therefore, this fishery is proposed to be placed in Category III.

Alaska miscellaneous finfish set gillnet. This fishery description has been changed from the definition ''Alaska gillnet (except salmon, herring, and sunken gill nets for groundfish)'' used under the 1994 LOF to correlate with the State of Alaska name for this fishery. This fishery is categorized based on logbook data. This fishery is proposed to be moved from Category II to Category III based on an infrequent take of marine mammals (under two unidentified pinnipeds and unidentified species are taken per year).

Alaska salmon purse seine. This fishery used to be called the ''Alaska salmon/herring beach and purse seine'' fishery and the ''Alaska South Unimak (False Pass and Unimak Pass) salmon purse seine'' fishery under the 1994 LOF. This proposed fishery description includes all salmon purse seine fisheries in Alaska except for the Alaska Southeast salmon purse seine fishery. Because mortality and serious injuries of marine mammals are not expected for this fishery, it is proposed to be placed in Category III.

California/Oregon/Washington salmon troll. The name of this fishery has been changed from that used in the 1994 LOF, because it is managed as one fishery and the intentional lethal take prohibition will reduce the level of take to very low levels. The previous division of the fishery into the ''Washington, Oregon north of 45°46′ (Cape Falcon) salmon troll'' and the ''California, Oregon south of 45°46′ (Cape Falcon) salmon troll'' was based on differences in intentional lethal take rates between the northern and southern portions of the fishery. In this fishery, lethal deterrence, which is now prohibited, was the predominant source of mortality to marine mammals. As lethal deterrence is illegal and expected to no longer be a source of mortality for marine mammals, it is proposed to reclassify this fishery from Category II to Category III.

Alaska salmon troll. Categorization of this fishery is based on logbook data from 1990. Known Steller sea lion mortalities and serious injuries for this fishery do not exceed 1 percent of the stock's PBR and current information does not indicate that this level is likely to exceed 1 percent. Thus, this fishery is proposed to be placed in Category III.

California herring purse seine. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (all marine mammal takes are at a level less than 1 percent of PBR).

California sardine purse seine. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (no marine mammal takes have been recorded in logbooks).

California squid purse seine. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (California sea lion takes are at a level less than 1 percent of PBR).

Alaska Metlakatla fish trap. No marine mammal mortalities or serious injuries have been recorded for this fishery. Therefore, this fishery is proposed to be placed in Category III. California squid dip net. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (no marine mammal takes have been recorded in logbooks).

Washington, Oregon salmon net pens. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (California sea lion takes are at a level less than 1 percent of the PBR).

Oregon salmon ranch. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (no marine mammal takes have been recorded in logbooks).

Miscellaneous finfish/groundfish longline/set line. This fishery is renamed from the 1994 LOF designation ''Alaska groundfish long line/set line (except sablefish in the Bering Sea-Aleutian Islands/Gulf of Alaska)'' to correspond with the fishery name as specified in the State of Alaska records and to include both miscellaneous finfish and groundfish (rockfish). This

fishery is classified based on observer data. This fishery is proposed to remain in Category III due to an infrequent take of marine mammals (all incidental takes are at a level less than 1 percent of the PBR).

Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line. Categorization of this fishery is based on observer data. Because there have been no records of incidental serious injury and mortality of marine mammals, this fishery is proposed to remain in Category III.

Alaska Gulf of Alaska groundfish trawl. This fishery is classified based on extrapolations from observer data. This fishery is proposed to remain in Category III due to an infrequent take of marine mammals (all incidental takes are at a level less than 1 percent of the PBR).

Alaska roe herring and food/bait herring gillnet. The name of this fishery has been modified from ''Alaska herring gill net'' in the 1994 LOF to include two different fisheries on herring. Alaska roe herring and food/bait herring purse seine. This fishery is renamed from the 1994 LOF designation of ''Alaska salmon/herring beach or purse seine'' to separate out the two target species and gear types.

Alaska roe herring and food/bait herring beach seine. This fishery is renamed from the 1994 LOF designation of ''Alaska salmon/herring beach or purse seine'' to separate out the two target species and gear types.

Washington, Oregon, California albacore, groundfish, bottom fish, California halibut nonsalmonid troll fisheries. This fishery is renamed from the 1994 LOF designation of ''Alaska North Pacific halibut, Alaska bottom fish, Washington, Oregon, California albacore, groundfish, bottom fish, California halibut nonsalmonid troll fisheries'' to separate the Alaska fisheries from the fisheries of other states.

Alaska halibut longline/set line (state and Federal waters). This fishery is renamed from the 1994 LOF designation of ''Alaska, Washington, Oregon North Pacific halibut longline/set line'' to separate the Alaska fisheries from the fisheries of other states. Washington, Oregon North Pacific halibut longline/set line. This fishery is renamed from the 1994 LOF designation of ''Alaska, Washington, Oregon North Pacific halibut longline/set line'' to separate the Alaska fisheries from the fisheries of other states. Alaska miscellaneous finfish purse seine. This fishery is renamed from the 1994 LOF designation of ''Alaska other finfish beach or purse seine'' to separate the beach and purse seine fisheries.

Alaska miscellaneous finfish beach seine. This fishery is renamed from the 1994 LOF designation of ''Alaska other finfish beach or purse seine'' to separate the beach and purse seine fisheries.

Washington, Oregon, California shrimp trawl. This fishery is renamed from the 1994 LOF designation of ''Alaska, Washington, Oregon shrimp trawl'' to separate the Alaska fisheries from the fisheries of other states.

Alaska shrimp otter trawl and beam trawl (statewide; includes Cook Inlet). This fishery is renamed from the 1994 LOF designation of ''Alaska, Washington, Oregon shrimp trawl'' to separate the Alaska fisheries from the fisheries of other states.

Alaska miscellaneous finfish otter and beam trawl—new fishery. This is proposed to be a new fishery to the LOF.

Alaska crustacean/octopus/squid pot. This fishery is renamed from the 1994 LOF designation of ''Alaska shellfish pot'' to more accurately describe this fishery. This fishery includes the crab pot fisheries, the shrimp pot fisheries, and the octopus/squid pot fisheries.

Oregon developmental fishery bottom longline/set line—new fishery. This fishery is classified based on analogy to other bottom longline/setline fisheries such as the Alaska sablefish longline fishery. This fishery is considered separate from the Oregon developmental longline fishery for shark/swordfish, which is classified into Category II based on analogy with surface longline fisheries for similar species in the Atlantic Ocean. Oregon developmental fishery round haul (purse seine and lampara) beach seine and throw net. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery trawl—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery pots, ring nets, and traps—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery handline and jig—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery dive, hand, mechanical collection—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

New Pacific Fisheries

The following fisheries are new Pacific fisheries proposed to be placed in Category III, because they are expected to have a remote likelihood of incidental serious injury or mortality of marine mammals:

California bait pen
California finfish and shellfish live trap/hook-and-line
Alaska spawn-on-kelp empoundment
California salmon enhancement rearing pen
Oregon shrimp trawl
Alaska octopus/squid purse seine
Alaska octopus/squid handline
Alaska octopus/squid longline
Alaska octopus/squid other gear

Fisheries Removed From the LOF

The following fisheries have been removed from the proposed LOF:

Northern Washington coastal (area 4 and 4A) salmon set gillnet. This fishery has been removed from the proposed LOF, because it is a fishery conducted by a Northwest Treaty Tribe. The provisions of 50 CFR part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

Washington coastal river set gillnet. This fishery has been removed from the proposed LOF, because it is a fishery conducted by a Northwest Treaty Tribe. The provisions of part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

Washington tribal ranch. This fishery has been removed from the proposed LOF, because it is a fishery conducted by a Northwest Treaty Tribe. The provisions of part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

Washington Puget Sound region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) set and drift gillnet. The name of this fishery has been modified from the name in the 1994 LOF in order to exclude set gillnet gear and commercial steelhead fishing since these fisheries are conducted only by treaty Indian fishers. The provisions of part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

California Klamath River gill net. This fishery is proposed for removal from the LOF, because no commercial fishing has been conducted in recent years.

Washington, Oregon Upper Columbia River Basin (above Bonneville Dam) salmon and other finfish gillnet. This fishery is proposed to be removed from the LOF, because no marine mammals are expected to be encountered.

Other fisheries. There are many fisheries in Category III that were not mentioned above. Because no additional information is available that warrants reclassification for these fisheries, they are proposed to remain in Category III.

Commercial Fisheries in the Atlantic Ocean and the Gulf of Mexico

Category I

Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark pair trawl. This fishery was classified based on observer data. This fishery is proposed to be placed in Category I, because the annual estimated take of common dolphins (an average of 1992 and 1993 data was used) is equal to the PBR for this stock (PBR = 33). In addition, the annual estimated take of the offshore stock of bottlenose dolphin (79 animals) is 95 percent of PBR (83).

Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark drift gill net. This fishery was classified based on observer data. This fishery was placed in Category I, because the annual estimated takes of common dolphins (424 animals), pilot whales (61 animals), spotted dolphins (23 animals), right whales (1 animal) and sperm whales (1 animal) exceed the PBRs for these stocks.

New England multispecies sink gill net. This fishery is directed primarily towards species covered by the Multispecies Fishery Management Plan and spiny dogfish. It was classified based on observer data. This fishery is proposed to remain in Category I, because the annual estimated take of harbor porpoise (an average of 1,300 animals for 1992 and 1993; average of 1,875 animals for 1990–93) exceeds the PBR for this stock (403 animals).

Gulf of Maine small pelagics. This fishery has been directed towards small pelagics including mackerel and herring, primarily for bait. Although there has been little or no effort in this fishery in recent years, this fishery is proposed to be retained in Category I, because there is no information currently available to place this fishery in a different category.

Atlantic Ocean, Caribbean, Gulf of Mexico tuna, shark, swordfish longline. This fishery was classified based on observer data. In 1994, this fishery was classified in Category II based on the classification system in section 114. Based on the proposed fishery classification criteria, this fishery is proposed to be placed in Category I, because the annual estimated take of pilot whales (26 animals) is at least 93 percent of the PBR (between 4 and 28 animals), an amount greater than the lower threshold for classification as a Category I fishery, this fishery is proposed to be placed in Category I.

Category II

U.S. Mid-Atlantic coastal gillnet. This fishery was categorized based on stranding information curated by the NMFS Northeast and Southeast Regions. The NMFS Northeast Fisheries Science Center has been focusing observer effort on this fishery from 1993 to the present but has not recorded any interactions. Classification of this fishery is based on the necropsy results of the harbor porpoise stranded in the mid-Atlantic in 1993–94. Of the 68 animals examined, 41 (59 percent) were in good enough condition to be evaluated as to whether or not they had been involved in a human interaction. Twenty-one of the 41 (51 percent) exhibited no signs of human interaction, and 19 (46 percent) were evaluated as having been involved in human interaction, based in each case on the presence of net marks. Therefore, approximately half of the stranded harbor porpoise in that area showed signs of having been involved in human interaction believed to be some kind of net gear. The average annual take of harbor porpoise in this fishery is then calculated at a minimum of ten animals, which is 2.5 percent of PBR. Because the annual take is between 1 percent and 50 percent of the PBR, this fishery is proposed to be placed in Category II.

U.S. South Atlantic shark gillnet fishery. Categorization of this fishery is based on a Category III report from a limited observer program. In 1992, one bottlenose dolphin was captured in this fishery. No takes were observed in 1993. This fishery is proposed to be placed in Category II, because the annual take of the Western North Atlantic coastal bottlenose dolphin averaged over 1992 and 1993 is between 1 percent and 50 percent of the PBR (25 animals).

Atlantic mid-water trawl fishery. This fishery is directed towards species included in the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan and other species. This fishery is proposed to be renamed and would include the 1994 LOF descriptions ''Mid-Atlantic squid trawl'' and ''Mid-Atlantic mackerel trawl''. The fishery is renamed, because the gear type and probability for interactions is similar for these mid-water trawl fisheries.

Categorization of this fishery is based on logbook data. Observer data exist for this fishery but are not currently available. In 1994, this fishery was classified in Category III based on the section 114 classification system. Based on the proposed fishery classification criteria, this fishery is proposed to be placed in Category II, because the annual take of pilot whales is between 1 percent and 50 percent of the PBR.

North Carolina roe mullet stop net. Categorization of this fishery is based on stranding information and visual observations. This is a new fishery proposed to be added to the LOF; stop nets for other target species and in other locations are included under Category III. This fishery is proposed to be placed in Category II, because the take of bottlenose dolphins (3 animals per year since 1990) is between 1 percent and 50 percent of the PBR for this stock (25 animals).

North Carolina haul seine fishery—new fishery. This fishery has the potential to take harbor porpoise and U.S. western North Atlantic coastal bottlenose dolphins. Because it is a new fishery to the LOF, and because of the high probability of takes of the above two stocks, this fishery is proposed to be classified in Category II.

Gulf of Maine, U.S. mid-Atlantic menhaden purse seine. This fishery is categorized based on Category III reports. This fishery is proposed to be placed in Category II due to mortality and serious injury of western North Atlantic coastal bottlenose dolphins (1.75 animals per year) that is 6 percent of the PBR for that stock. Because western North Atlantic coastal bottlenose dolphins do not occur in the Gulf of Maine, it may be appropriate to separate this fishery into northern and southern components.

Category III

North Atlantic bottom trawl. This fishery targets species included in, but

not limited to, all species described in the Multispecies, Summer Flounder, and Scup and Sea Bass Fishery Management Plans. This fishery is renamed from the 1994 LOF designation ''Gulf of Maine, Mid-Atlantic groundfish trawl'' to include a specific list of species targeted. This fishery was classified based on observer data.

Six takes of marine mammals incidental to this fishery have been observed from 1989 to 1992. Three of the takes were marine mammals known or suspected to have been dead prior to being caught in the bottom trawl gear. Two takes of striped dolphin were observed in December 1991 along the continental shelf edge off Rhode Island in 50 fathoms of water. Extrapolation of these takes to the entire groundfish bottom trawl fishery generate an estimated mortality level of 45 animals which is 62 percent of this species' PBR. However, several complicating factors exist:

- The observed coverage in the Category III groundfish bottom trawl fishery is small (under 1 percent) and was designed to monitor fishery management related issues. Therefore, the coefficient of variation of the mortality estimate is very high and is derived from nonrandom observer effort.
- The known distribution of the striped dolphin is along the shelf edge from Georges Bank to Cape Hatteras and extends further south.
- Since the species only exists in a small portion of the area fished by North Atlantic Bottom Trawl gear, extrapolation of the observed mortality to the entire fishery produces a substantial overestimate of the total mortality.
- Fishing effort in this fishery will be reduced by 50 percent in 5 years under Amendment nos. 5 and 7 to the Fishery Management Plan for the Northeast Multispecies Fishery, which may be implemented as early as next year, may reduce effort by 80 percent in the first year of implementation.

The mortality estimates derived from two takes of striped dolphin over 4 years of less than 10 percent observer effort are statistically weak and, due to the marginal overlap of the fishery with this species distribution, likely to be an overestimate. The fishery is facing severe cutbacks in effort under ongoing and proposed Magnuson Act actions, further reducing the likelihood of interactions. Therefore, the fishery is proposed to remain in Category III.

U.S. Mid-Atlantic, U.S. South Atlantic, Gulf of Mexico shrimp trawl. Categorization of this fishery is based on observer data. There has been one observed serious injury or mortality in this fishery from 1979 to 1993. Because this is a low level of mortality, this fishery is proposed to be placed in Category III.

Finfish aquaculture. The name of this fishery is proposed to be changed from the 1994 LOF designation ''Gulf of Maine Atlantic salmon'' to broaden the definition to include other regions and species. Classification of this fishery is based on logbook data and the proposed reclassification due to the prohibition of intentional lethal takes. Incidental takes of harbor seals are less than 1 percent of the PBR. Thus, this fishery is proposed to be placed in Category III.

Shellfish aquaculture. This is a new fishery that is proposed to be added to the LOF. This fishery is classified by analogy to other aquaculture fisheries that have a remote likelihood of serious injury and mortality of marine mammals.

Gulf of Mexico inshore gillnet (black drum, sheepshead). This is a new fishery proposed to be added to the LOF. This fishery is classified by analogy to other inshore gillnet fisheries, specifically the inshore fisheries that occur in the U.S. mid-Atlantic.

U.S. mid-Atlantic hand seine. This is a new fishery proposed to be added to the LOF. This fishery is placed in Category III by analogy with other hand seine fisheries.

Offshore monkfish bottom gillnet. This is a new fishery that is proposed to be added to the LOF. This fishery involves a small number (under 50) of vessels operating along the shelf edge off Rhode Island. Because this fishery uses gear that is set very deep and a remote likelihood of serious injury and mortality of marine mammals is expected, it is proposed to be placed in Category III.

Georgia, South Carolina, Maryland whelk trawl. This fishery is renamed from the 1994 LOF designation ''Georgia, South Carolina whelk trawl'' to include the extended range of the fishery.

U.S. mid-Atlantic offshore surfclam and quahog dredge. This fishery is renamed from the 1994 LOF designation ''Mid-Atlantic offshore clam'' to include the dredge fishery for quahogs.

U.S. mid-Atlantic/Gulf of Mexico oyster. This fishery is renamed from the 1994 LOF designation ''Mid-Atlantic oyster'' to include the Gulf of Mexico oyster fishery.

U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net). This fishery includes all fixed or staked net fisheries from Nantucket Sound to the Chesapeake Bay. One bottlenose dolphin was found entangled in a pound net lead during the five years of data collection under the Exemption Program. This occurred in a Chesapeake Bay fishery for which bycatch survey information has been available throughout the 5-year Exemption Program. Bycatch surveys are also carried out in other regions where this gear is used. Therefore, we believe that the remote possibility of marine mammal mortality and serious injury occurring in these fisheries is verifiable, and the fishery remain in Category III.

Gulf of Mexico menhaden purse seine. This fishery is proposed to be defined as separate from the U.S. South Atlantic menhaden purse seine fishery. This fishery is proposed to be placed in Category III based on an expectation of low levels of interaction with marine mammals.

U.S. South Atlantic menhaden purse seine. This fishery is proposed to be defined as separate from the Gulf of Mexico menhaden purse seine fishery. This fishery is proposed to be placed in Category III based on an expectation of low levels of interaction with marine mammals.

Proposed List of Fisheries

The following two tables list the commercial fisheries of the United States in their proposed categories. The estimated number of vessels is expressed in terms of the number of active participants in the fishery, when possible, and,as the estimated number of vessels or persons when information on the number of active participants is not available, these values have been updated from the 1994 LOF when possible. The information on which marine mammal species/stocks are involved in interactions with the fishery is based on observer data, logbook data, stranding reports, fisher's reports, and the 1994 LOF. If there is no information indicating which stocks of marine mammals might be involved in fishery interactions, analogy is used to provide a list of stocks with which interactions may occur, if appropriate. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the ESA.

Pursuant to section 101(a)(5)(E), NMFS must determine which fisheries have a negligible impact on species or stocks of marine mammals that are listed under the ESA. NMFS is therefore specifically seeking public comments that address those fisheries in the proposed LOF (Tables 1 and 2) that interact with species or stocks of marine mammals listed under the ESA and the information on the magnitude of the

takes of such species or stocks found in the EA that accompanies this proposed rule.

TABLE 1.—PROPOSED LIST OF FISHERIES

[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
Category I:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet fishery	520	99, 109, 110, 138, 139, 142.
CA/OR/WA thresher shark/swordfish/blue shark (blue shark OR only) drift gillnet fishery	150	2*+, 92*+, 103, 104, 105, 107, 109, 110, 111, 113*, 117*, 142.
Category II:		
AK Prince William Sound salmon drift gillnet	509	1*+, 5, 19.
AK Peninsula/Aleutians salmon drift gillnet fishery	107	3*, 5, 6, 7, 19, 20, 154.
Southeast Alaska salmon drift gillnet fishery	443	2*+, 4, 18, 19, 20.
AK Cook Inlet drift gillnet	554	1*+, 5, 19, 20.
AK Yakutat salmon set gillnet	152	4, 7.
AK Cook Inlet salmon set gillnet	633	1*+, 5, 19, 20.
AK Peninsula/Aleutian Island salmon set gillnet	120	1*+, 19.
AK Kodiak salmon set gillnet	162	5, 19.
AK Bristol Bay drift gillnet	1,741	1*+, 3*, 6, 7, 8, 14, 18, 25.
AK Bristol Bay set gillnet	888	6, 14.
AK Metlakatla/Annette Island salmon drift gillnet	60	4, 19.
WA Puget Sound Region salmon drift gillnet fishery (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded).	1,044	2*+, 103, 102, 138, 141.
CA anchovy, mackerel, tuna purse seine	150	107, 138, 139.
AK Southeast salmon purse seine	443	27*+, 19.
AK Bering Sea and Aleutian Islands groundfish trawl	490	1*+, 2*+, 3*, 17, 18, 19, 6, 7, 8, 9, 10, 20, 142, 155.
AK pair trawl	2	5, 6, 18, 20.
AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).	226	16, 142.
OR swordfish/blue shark surface longline fishery	30	unknown.
Category III:		
AK Prince William Sound set gillnet	29	1*+, 19.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,651	7, 12, 13, 14, 19.
AK roe herring and food/bait herring gillnet	162	19, 4, 5, 6.
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	138, 140, 141.
WA Willapa Bay drift gillnet	82	2*+, 138, 141, 142.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	2*+, 138, 141.
WA, OR lower Columbia River (includes tributaries) drift gillnet	40	2*+, 138, 140, 141.
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	2*+, 25, 99, 100, 103, 109, 110, 138, 139.
AK miscellaneous finfish set gillnet	9	1*+, 2*+, 19, 4, 5, 6.
Hawaii gillnet	115	145*+.
AK salmon purse seine (except Southeast Alaska, which is in Category II)	1,053	1*+, 2*+, 3, 19, 155.
AK salmon beach seine	34	1*+, 2*+, 4, 5, 6, 19.
AK roe herring and food/bait herring purse seine	866	1*+, 2*+, 4, 5, 6, 19.
AK roe herring and food/bait herring beach seine	14	1*+, 2*+, 4, 5, 6, 19.
AK octopus/squid purse seine	3	1*+, 2*+, 4, 5, 6, 19.
CA herring purse seine	100	106, 138, 139.
CA sardine purse seine	120	138.
CA squid purse seine	145	105, 113, 138.
CA squid dip net	115	113, 138.
WA, OR salmon net pens	21	2*+, 138, 140, 141.
OR salmon ranch	1	138, 141.
AK salmon troll	1,450	1*+, 2*+, 3*, 5, 6, 33*+.
CA/OR/WA salmon troll	4,300	2*+, 138, 139, 141.
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,354	4, 5, 6, 139, 140, 141.
HI trolling, rod and reel	1,795	127, 131, 132.
Guam tuna troll	50	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented.
American Samoa tuna troll	<50	None documented.
AK miscellaneous finfish purse seine	6	1*+, 2*+, 4, 5, 6, 19.

TABLE 1.—PROPOSED LIST OF FISHERIES—Continued

[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
AK miscellaneous finfish beach seine	4	1*+, 2*+, 4, 5, 6, 19.
WA salmon purse seine	440	103, 140, 141.
WA salmon reef net	53	140, 141.
WA, OR herring, smelt, squid purse seine or lampara	130	138, 140, 141.
WA (all species) beach seine or drag seine	235	None documented.
HI purse seine	18	None documented.
HI opelu/akule net	16	None documented.
HI throw net, cast net	47	None documented.
HI net unclassified	106	None documented.
AK state waters sablefish long line/set line	240	5, 6, 16, 142.
Miscellaneous finfish/groundfish longline/set line	838	5, 6, 142.
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	127, 131.
WA, OR North Pacific halibut longline/set line	5,364	16, 21*+.
AK halibut longline/set line (state and Federal waters)	213	1*+, 2*+, 5, 6, 26, 27, 142.
WA, OR, CA groundfish, bottomfish longline/set line	367	2*+, 18, 138, 139, 141.
AK octopus/squid longline	1	None documented.
CA shark/bonito longline/set line	10	138.
WA, OR, CA shrimp trawl	300	None documented.
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	48	None documented.
AK Gulf of Alaska groundfish trawl	490	1*+, 2*+, 3*, 5, 7, 8, 9, 10, 16, 17, 20, 142.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	8	20.
AK miscellaneous finfish otter or beam trawl	324	None documented.
AK food/bait herring trawl	2	None documented.
WA, OR, CA groundfish trawl	585	1*+, 3*, 18, 103, 138, 139, 141.
AK crustacean pot	1,951	None documented.
AK Bering Sea, Gulf of Alaska finfish pot	226	5, 6, 155.
WA, OR, CA sablefish pot	176	139, 140, 141.
WA, OR, CA crab pot	1,478	25, 28, 139, 140, 141.
WA, OR shrimp pot & trap	254	None documented.
CA lobster, prawn, shrimp, rock crab, fish pot	608	None documented.
OR, CA hagfish pot or trap	25	None documented.
HI lobster trap	15	145*+.
HI crab trap	22	None documented.
HI fish trap	19	None documented.
HI shrimp trap	5	None documented.
AK North Pacific halibut handline and mechanical jig	84	None documented.
AK other finfish handline and mechanical jig	474	None documented.
AK octopus/squid handline	2	None documented.
WA groundfish, bottomfish jig	679	2*+, 138, 140, 141.
HI aku boat, pole and line	54	None documented.
HI inshore handline	650	132.
HI deep sea bottomfish	434	132, 145*+.
HI tuna	144	131, 132, 145*+.
Guam bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
American Samoa bottomfish	<50	None documented.
WA, OR smelt, herring dip net	119	None documented.
CA swordfish harpoon	228	None documented.
AK Southeast Alaska herring food/bait pound net	7	None documented.
WA herring brush	1	None documented.
WA/OR/CA bait pens	13	25, 141.
Coastwide scallop dredge	106	None documented.
AK abalone	177	None documented.
AK dungeness crab	1	None documented.
AK herring spawn-on-kelp	306	2*+.
AK urchin and other fish/shellfish	127	None documented.
AK clam hand shovel	125	None documented.
AK clam mechanical/hydraulic fishery	3	None documented.
WA herring spawn-on-kelp	4	None documented.
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented.
CA abalone	111	None documented.

TABLE 1.—PROPOSED LIST OF FISHERIES—Continued

[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
CA sea urchin	583	None documented.
HI squiding, spear	267	None documented.
HI lobster diving	6	None documented.
HI coral diving	2	None documented.
HI handpick	135	None documented.
WA shellfish aquaculture	684	None documented.
WA, CA kelp	4	None documented.
HI fish pond	10	None documented.
AK, WA OR, CA commercial passenger fishing vessel	1,243	4, 5, 6, 138, 139, 140, 141.
AK octopus/squid ''other''	19	None documented.
HI ''other''	114	None documented.
AK Metlakatla purse seine	3	4, 19.
CA finfish and shellfish live trap/hook-and-line	93	None documented.
CA salmon enhancement rearing pen	>1	None documented.

TABLE 2.—PROPOSED LIST OF FISHERIES

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
Category I:		
Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark pair trawl	7	49, 50*, 51*, 54*, 59*.
Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark drift gillnet	75	33*+, 37, 38*, 49, 50*, 51*, 52, 54*, 57, 58, 59*.
New England multispecies sink gillnet	341	32*, 33*+, 36, 50*, 51*, 52, 61, 62.
Gulf of Maine small pelagics surface gillnet	133	33*+, 36, 52, 61*, 62, 63.
Atlantic Ocean, Caribbean, Gulf of Mexico tuna, shark, swordfish longline	830	33*+, 36, 50, 51, 54*.
Category II:		
U.S. mid-Atlantic coastal gillnet fishery	>655	33*+, 36, 60*, 61*.
U.S. South Atlantic shark gillnet fishery	10	60*.
Gulf of Maine, Mid-Atlantic menhaden purse seine	10	36, 60*.
Atlantic mid-water trawl	620	49, 50*, 51*, 52, 54*.
North Carolina haul seine	unknown	60*, 61*.
North Carolina roe mullet stop net	13	60*.
Category III:		
North Atlantic bottom trawl	1,052	50*, 51*, 52, 57, 60*.
Mid-Atlantic, U.S. South Atlantic, Gulf of Mexico shrimp trawl	>18,000	71, 72, 73, 74, 75, 76.
Finfish aquaculture	48	62, 63.
Shellfish aquaculture	unknown	None documented.
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	33*+, 36, 60*, 61*.
Long Island Sound inshore gillnet	20	33*+, 36, 60*, 61*.
Delaware Bay inshore gillnet	60	33*+, 36, 60*, 61*.
North Carolina inshore gillnet	94	33*+, 36, 60*, 61*.
Gulf of Mexico inshore gillnet (black drum, sheepshead)	unknown	None documented.
Offshore monkfish bottom gillnet	<50	None documented.
Gulf of Maine northern shrimp trawl	320	None documented.
Gulf of Maine mackerel trawl	30	None documented.
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented.
Gulf of Maine, Southern North Atlantic, Gulf of Mexico coastal herring trawl	5	55, 56.
Mid-Atlantic mixed species trawl	>1,000	None documented.
Gulf of Mexico butterfish trawl	2	55, 56.
Georgia, South Carolina, Maryland whelk trawl	25	None documented.
Calico scallops trawl	200	None documented.
Bluefish, croaker, flounder trawl	550	None documented.
Crab trawl	400	None documented.
Gulf of Maine Atlantic herring purse seine	30	61*, 62, 63.
Gulf of Mexico menhaden purse seine	51	73, 74, 75, 76.
U.S. South Atlantic menhaden purse seine	51	60*.
Florida west coast sardine purse seine	16	73.

TABLE 2.—PROPOSED LIST OF FISHERIES—Continued

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
U.S. mid-Atlantic hand seine	> 250	None documented.
Gulf of Maine tub trawl groundfish bottom longline/hook-and-line	46	62, 63.
U.S. South Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/hook-and-line	1,944	None documented.
U.S. South Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	124	None documented.
Gulf of Maine, U.S. mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	None documented.
U.S. South Atlantic, Gulf of Mexico & U.S. mid-Atlantic pelagic hook-and-line/harpoon	1,446	None documented.
Gulf of Maine, U.S. South Atlantic coastal shad, sturgeon gillnet	1,285	36, 61*.
U.S. South Atlantic, Gulf of Mexico coastal gillnet	4,000	73, 74, 75.
Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet	271	71, 72, 73, 74, 75.
Florida mullet gillnet	unknown	None documented.
Gulf of Maine, U.S. mid-Atlantic mixed species trap/pot	100	33*+, 36, 61*, 62, 63.
U.S. mid-Atlantic black sea bass trap/pot	30	None documented.
U.S. mid-Atlantic eel trap/pot	>700	None documented.
Gulf of Maine, U.S. mid-Atlantic inshore lobster trap/pot	10,613	32*, 33*+, 36, 52, 62.
Gulf of Maine, U.S. mid-Atlantic offshore lobster trap/pot	2,902	None documented.
Atlantic Ocean, Gulf of Mexico blue crab trap/pot	20,500	73, 74, 75, 153+.
U.S. South Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot	736	73, 74, 75, 153+.
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	32*, 33*+, 36, 61*, 62, 63.
U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net)	500	None documented.
U.S. mid-Atlantic crab stop seine/weir	2,600	None documented.
Gulf of Maine, U.S. mid-Atlantic sea scallop dredge	233	33*+.
U.S. mid-Atlantic offshore surfclam and quahog dredge	100	None documented.
Gulf of Maine mussel	> 50	None documented.
U.S. mid-Atlantic/Gulf of Mexico oyster	7,000	None documented.
U.S. South Atlantic, Caribbean haul seine	150	None documented.
Caribbean beach seine	15	153+.
Gulf of Maine urchin dive, hand/mechanical collection	> 50	None documented.
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
1	Steller sea lion	Western U.S.*
2	Steller sea lion	Eastern U.S.*
3	Northern fur seal.	North Pacific*
4	Harbor seal	Southeast Alaska.
5	Harbor seal	Gulf of Alaska.
6	Harbor seal	Bering Sea.
7	Spotted seal	Alaska.
8	Bearded seal	Alaska.
9	Ringed seal	Alaska.
10	Ribbon seal	Alaska.
11	Beluga	Beaufort Sea.
12	Beluga	Eastern Chukchi Sea.
13	Beluga	Norton Sound.
14	Beluga	Bristol Bay.
15	Beluga	Cook Inlet.
16	Killer whale	Alaska and Washington Inland Waters—Resident.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
17	Killer whale	Alaska and Washington Inland Waters—Transient.
18	Pacific white-sided dolphin.	North Pacific.
19	Harbor porpoise.	Alaska.
20	Dall's porpoise	Alaska.
21	Sperm whale	Alaska*.
22	Baird's beaked whale.	Alaska.
23	Cuvier's beaked whale.	Alaska.
24	Stejnerger's beaked whale.	Alaska.
25	Gray whale	Eastern North Pacific.
26	Humpback whale.	Western North Pacific*.
27	Humpback whale.	Central North Pacific*.
28	Fin whale	N. Pacific*.
28	Minke whale	Alaska.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
29	Northern right whale.	North Pacific*.
31	Bowhead whale.	Western Arctic Stock*.
32	North Atlantic right whale.	Western North Atlantic*.
33	Humpback whale.	Western North Atlantic*.
34	Fin whale	Western North Atlantic*.
35	Sei whale	Western North Atlantic*.
36	Minke whale	Canadian east coast.
37	Blue whale	Western North Atlantic*.
38	Sperm whale	Western North Atlantic*.
39	Dwarf sperm whale.	Western North Atlantic*.
40	Pygmy sperm whale.	Western North Atlantic*.
41	Killer whale	Western North Atlantic.
42	Pygmy killer whale.	Northern Gulf of Mexico.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
43	Northern bottlenose whale.	Western North Atlantic.
44	Cuvier's beaked whale.	Western North Atlantic*.
45	True's beaked whale.	Western North Atlantic*.
46	Gervais' beaked whale.	Western North Atlantic*.
47	Blainville's beaked whale.	Western North Atlantic*.
48	Sowerby's beaked whale.	Western North Atlantic*.
49	Risso's dolphin	Western North Atlantic.
50	Pilot whale, long-finned.	Western North Atlantic*.
51	Pilot whale, short-finned.	Western North Atlantic*.
52	Atlantic white-sided dolphin.	Western North Atlantic.
53	White-beaked dolphin.	Western North Atlantic.
54	Common dolphin.	Western North Atlantic*.
55	Atlantic spotted dolphin.	Western North Atlantic*.
56	Pantropical spotted dolphin.	Western North Atlantic*.
57	Striped dolphin	Western North Atlantic.
58	Spinner dolphin	Western North Atlantic.
59	Bottlenose dolphin.	Mid-Atlantic offshore*.
60	Bottlenose dolphin.	Western North Atlantic Coastal*.
61	Harbor porpoise.	Gulf of Maine/Bay of Fundy*.
62	Harbor seal	Western North Atlantic.
63	Gray seal	Northwest North Atlantic.
64	Harp seal	Northwestern North Atlantic.
65	Hooded seal northwestern.	North Atlantic.
66	Sperm whale	Northern Gulf of Mexico*.
67	Bryde's whale	Northern Gulf of Mexico.
68	Cuvier's beaked whale.	Northern Gulf of Mexico.
69	Blainville's beaked whale.	Northern Gulf of Mexico.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
70	Gervais' beaked whale.	Northern Gulf of Mexico.
71	Bottlenose dolphin.	Gulf of Mexico Outer Continental Shelf.
72	Bottlenose dolphin.	Gulf of Mexico Continental Shelf Edge and Slope.
73	Bottlenose dolphin.	Western Gulf of Mexico Coastal.
74	Bottlenose dolphin.	Northern Gulf of Mexico Coastal.
75	Bottlenose dolphin.	Eastern Gulf of Mexico Coastal.
76	Bottlenose dolphin.	Gulf of Mexico Bay & Sound*.
77	Atlantic spotted dolphin.	Northern Gulf of Mexico.
78	Pantropical spotted dolphin.	Northern Gulf of Mexico.
79	Striped dolphin	Northern Gulf of Mexico.
80	Spinner dolphin	Northern Gulf of Mexico.
81	Rough-toothed dolphin.	Northern Gulf of Mexico.
82	Clymene dolphin.	Northern Gulf of Mexico.
83	Fraser's dolphin.	Northern Gulf of Mexico.
84	Killer whale	Northern Gulf of Mexico.
85	False Killer whale.	Northern Gulf of Mexico.
86	Pygmy killer whale.	Atlantic EEZ.
87	Dwarf sperm whale.	Northern Gulf of Mexico*.
88	Pygmy sperm whale.	Northern Gulf of Mexico*.
89	Melon-headed whale.	Northern Gulf of Mexico.
90	Risso's dolphin	Northern Gulf of Mexico.
91	Pilot whale, short-finned.	Northern Gulf of Mexico*.
92	Sperm whale	California to Washington*.
93	Humpback whale.	California/Mexico*.
94	Blue whale	California/Mexico*.
95	Fin whale	California to Washington*.
96	Brydes whale	Eastern Tropical Pacific.
97	Sei whale	Eastern North Pacific*.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
98	Minke whale	California/Oregon/Washington.
99	Harbor porpoise.	Central California*.
100	Harbor porpoise.	Northern California.
101	Harbor porpoise.	Oregon/Washington coast.
102	Harbor porpoise.	Inland Washington.
103	Dall's porpoise	California/Oregon/Washington.
104	Pacific white sided dolphin.	California/Oregon/Washington.
105	Risso's dolphin	California/Oregon/Washington.
106	Bottlenose dolphin.	California coastal.
107	Bottlenose dolphin.	California/Oregon/Washington Offshore.
108	Striped dolphin	California.
109	Common dolphin, short-beaked.	California/Oregon/Washington.
110	Common dolphin, long-beaked.	California.
111	Northern right whale dolphin.	California/Oregon/Washington.
112	Killer whale	California/Oregon/Washington.
113	Pilot whale—short-finned.	California/Oregon/Washington*.
114	Baird's beaked whale.	California to Washington*.
115	Mesoplodont beaked whales.	California to Washington*.
116	Cuvier's beaked whale.	California/Oregon/Washington*.
117	Pygmy sperm whale.	California/Oregon/Washington*.
118	Dwarf sperm whale.	California/Oregon/Washington.
119	Brydes whale	Hawaii.
120	Blue whale	Hawaii*.
121	Fin whale	Hawaii*.
122	Pygmy killer whale.	Hawaii.
123	Pilot whale—short-finned.	Hawaii.
124	Risso's dolphin	Hawaii.
125	Killer whale	Hawaii.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
126	Melon-headed whale.	Hawaii.
127	False killer whale.	Hawaii.
128	Pantropical spotted dolphin.	Hawaii.
129	Striped dolphin	Hawaii.
130	Spinner dolphin	Hawaii.
131	Rough-Toothed dolphin.	Hawaii.
132	Bottlenose dolphin.	Hawaii.
133	Pygmy sperm whale.	Hawaii.
134	Dwarf sperm whale.	Hawaii.
135	Sperm whale ..	Hawaii*.
136	Cuvier's beaked whale.	Hawaii.
137	Blainville's beaked whale.	Hawaii.
138	California sea lion.	U.S.
139	Harbor seal	California.
140	Harbor seal	Washington Inland waters.
141	Harbor seal	Oregon/Washington coast.
142	Northern elephant seal.	California breeding.
143	Guadalupe fur seal.	Mexico to California*.
144	Northern fur seal.	San Miguel Island.
145	Hawaiian monk seal.	Hawaii*.
146	Beaked whale, all stocks.	Pacific.
147	Harbor seal, all stocks.	Pacific.
148	Beaked whale, all stocks.	Atlantic.
149	Spotted dolphin, all stocks.	Atlantic.
150	Pilot whale, all stocks.	Atlantic.
151	Bottlenose dolphin, all stocks.	Gulf of Mexico.
152	Southern (Calif.) sea otter.	California*.
153	Florida manatee.	Florida*.
154	Walrus	Pacific.
155	Northern (Alaska) sea otter.	Pacific.

Take Reduction Plans

New section 118(f) of the MMPA requires NMFS to develop and implement take reduction plans designed to assist in the recovery or prevent the depletion of each strategic stock that interacts with a Category I or II fishery. NMFS may also develop and implement a take reduction plan for any other marine mammal stock that interacts with a Category I fishery that NMFS determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks. Under these proposed regulations, a Category I fishery would be considered to have a high level of mortality and serious injury across a number of marine mammal stocks, if its annual incidental mortality and serious injury exceeds or equals 50 percent of two or more marine mammal stocks' PBRs.

As required by section 118(f)(2), the immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals from commercial fishing operations to levels less than the PBR established for a stock under the SAR developed pursuant to section 117, and the long-term goal is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals from commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Failure of a plan to meet these goals may result in a revision of the plan and implementation of regulations necessary to achieve these goals. Priority for development and implementation of these plans will be accorded to stocks whose level of incidental mortality and serious injury exceeds the PBR, those that have a small population size, and those that are declining rapidly.

Each take reduction plan is required by section 118(f)(4) of the MMPA to include a review of information in the final SAR and any substantial new information. In addition, each plan is required to include recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury and recommended dates for achieving the specific objectives of the plan. Regulations implementing take reduction plans may: (1) Establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area; (2) require the use of alternative fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene skipper's panels; and (3) provide for monitoring of the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals. Plans would not necessarily include each of these types of measures, rather they would be flexible and designed to address specific problems.

Section 118(f)(6) requires NMFS to establish a take reduction team to develop a draft take reduction plan within 30 days after the publication of a final SAR for a strategic stock. These teams will consist of a balance of representatives of the fishing industry and non-resource user interests. Section 118(f)(6) of the MMPA requires that members represent a diversity of interests including those of Federal agencies, appropriate states and regional fishery management councils, interstate fishery commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as NMFS deems appropriate. By including all interested parties on take reduction teams, a fair and reasonable plan designed to reduce incidental takes of marine mammals during commercial fishing operations should be developed. Take reduction team meetings will be open to the public.

Within 6 months after establishment of the take reduction teams for strategic stocks that interact with Category I or II fisheries and where mortality exceeds PBR, the team must submit a draft take reduction plan for such stock to NMFS. NMFS must take the draft plan into consideration and must publish in the **Federal Register**, for public review and comment, the plan proposed by the team, any changes proposed by NMFS, the rationale for such changes, and proposed regulations to implement such a plan. NMFS must issue a final take reduction plan and implementing regulations within 60 days after the close of the comment period.

Emergency Regulations

New section 118(g) of the MMPA provides NMFS with authority to issue emergency regulations to reduce incidental mortality and serious injury of marine mammals if the incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species. Emergency regulations can apply to Category I, II,

or III fisheries. This emergency authority will be used only when no alternative is available to prevent an immediate and significant adverse impact. In the case of a marine mammal population for which a take reduction plan, developed under subpart B, is in effect, section 118(g)(1)(A) requires that the emergency regulations be to reduce incidental mortality and serious injury consistent with the plan, to the maximum extent practicable and that, NMFS, concurrently, approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.

In the case of a marine mammal population for which a take reduction plan is being prepared, section 118(g)(1)(B) requires NMFS to approve and implement the plan on an expedited basis, which would provide methods to address such adverse impact if still necessary.

In the case of a marine mammal population for which a take reduction plan does not exist, or is not being developed, or in the case of a Category III fishery that NMFS believes may be contributing to such adverse impact, section 118(g)(1)(C) requires NMFS to immediately review the SAR for such population and the classification of such commercial fishery to determine if a take reduction team should be established.

As required by section 118(g)(2) of the MMPA, NMFS must consult with the regional fishery management councils, state fishery agencies, and treaty Indian tribal governments, where appropriate, before taking any emergency action. Emergency actions must, to the maximum extent practicable, avoid interfering with existing regional, state, or tribal fishery management or conservation programs, and must be as brief in duration and nonintrusive as possible. Emergency actions could include, but would not necessarily be limited to: Quotas on the number of marine mammals that may be taken; restrictions on the time, manner and location where the fishery may operate; and prohibitions on the use of fishing techniques or gear which are found to cause excessive marine mammal injuries or mortalities. Emergency regulations would expire at the end of the applicable commercial fishing season or at the end of 180 days, whichever is earlier. However, they could be extended for an additional 90-day period, if needed to address a continuing threat. If NMFS finds that the incidental morality and serious injury is not having an immediate and significant adverse impact over a period of time longer than 1 year, NMFS would develop and implement a take reduction plan under proposed § 229.14 instead of prescribing emergency regulations.

Takes of Listed Marine Mammals

Section 101(a)(5)(E) was added to the MMPA in 1994 to authorize NMFS to issue permits to commercial fishing vessels of the United States allowing for up to 3 years, incidental takes of marine mammals listed as threatened species or endangered species under the ESA. A permit may be issued only if NMFS determines that the total incidental mortality and serious injury from commercial fisheries would have a negligible impact on the species or stock (proposed § 229.2), and that a recovery plan has been, or is in the process of being, developed for that stock under the ESA. Furthermore, any applicable requirements of section 118 (e.g., registration, monitoring, and take reduction plans) must also be met before NMFS could authorize the incidental taking of listed marine mammals by any Category I or II fishery. NMFS will publish a list identifying the Category I, II and III fisheries for which such determinations were made. However, only Category I and II vessels require permits under section 101(a)(5)(E); vessels fishing in either a Category I or II fishery must receive authorizations under both section 118 and section 101(a)(5)(E) in order to legally engage in the incidental taking of listed marine mammals.

Vessels in Category III fisheries that are not required to register under section 118 but which are included in the list published pursuant to section 101(a)(5)(E) will not be subject to the penalties of the MMPA for the incidental taking of marine mammals that are listed as endangered or threatened species under the ESA, as long as the vessel owner or operator of such vessel, in accordance with the requirements of proposed § 229.6, reports any incidental mortality or injury within 48 hours of the end of the fishing trip where the incidental taking occurred.

The MMPA states that after opportunity for public comment, NMFS must determine which fisheries that have interaction with ESA-listed marine mammals have a negligible impact on those stocks. NMFS must then publish a list of those fisheries for which such a determination has been made. Because the proposed LOF (Tables 1 and 2 in this rule) specifies which fisheries have interactions with species or stocks listed under the ESA, and because the associated Environmental Assessment provides the data on which a negligible determination will be made, NMFS is now requesting public comment specifically regarding this issue; such comments will be considered and a final list of those fisheries for which takes have been determined to be negligible will be published in the **Federal Register**.

The section 101(a)(5)(E) authorization in the MMPA to incidentally take marine mammals listed under the ESA will include appropriate terms and conditions made necessary by the associated ESA section 7 consultation. These conditions and restrictions may include actions to reduce the incidental taking or may prohibit any taking of an endangered or threatened species.

NMFS may issue permits under section 101(a)(5)(E) of the MMPA to an identifiable group of vessels, rather than to individuals when possible. Whenever possible, NMFS will issue permits issued under section 101(a)(5)(E) of the MMPA simultaneously with authorizations under section 118 in order not to delay fishing activities. Thus, fishers will not have to apply for a permit under section 101(a)(5)(E). When the level of incidental taking is more than negligible, NMFS may modify, suspend, or revoke such permits. In cases where an individual fisher has a record of excessive incidental takes, NMFS may revoke the permit from that fisher and not from the entire group of vessels in the fishery. For fisheries that have incidental takes of more than one ESA-listed stock, a permit under section 101(a)(5)(E) may be issued to authorize the takes of one stock but not necessarily other stocks.

Penalties

Except as otherwise provided, violations of section 118, the implementing regulations, Authorization Certificates, or permits issued to fishers authorizing the incidental taking of listed marine mammals during commercial fishing operations would subject vessel owners and fishers to the penalties provided in the MMPA and in NOAA regulations governing administrative procedures for the assessment of penalties (15 CFR part 904).

In addition, as noted above, Certificates may be revoked, suspended, or denied for violations of the MMPA, the regulations, take reduction plans, permits issued to fishers to authorize the incidental taking of listed marine mammals during commercial fishing operations, or emergency regulations issued under this part 229. For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the

end of the fishing trip during which such taking occurred, will result in suspension or revocation of an Authorization Certificate until such requirements have been fulfilled. For fisheries operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of the fishing trip during which such taking occurred, will subject such persons to the full penalties of the Act.

An owner of a vessel engaged in a Category I or II fishery who fails to obtain from the NMFS an authorization for such vessel under this section, or fails to maintain a current and valid authorization for such vessel will be deemed to have violated this part and will be subject to the penalties of sections 105, 106, and 107 of the MMPA. An owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal or other physical evidence of such authorization issued by NMFS is displayed on or is in possession of the operator of the vessel, will be deemed to have violated this part and will be subject to a fine of not more than $100 for each offense.

Owners or operators of vessels or nonvessel fisheries that fail to comply with a take reduction plan or implementing regulations issued under subpart C of this part will be subject to the penalties in sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to 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 establish a process for issuance of authorizations for the incidental taking of marine mammals while conducting commercial fishing in waters of the U.S. exclusive economic zone. Without these authorizations, the taking of marine mammals would be prohibited and fishers could be subject to fines when takings occur in the course of commercial fishing operations. The payment of a fee set to recover the costs of certificate issuance would be required to obtain an Authorization Certificate. While the amount of such fee has not yet been determined, it would cost no more than approximately $30. Approximately 20,000 fishers are currently required to register under the old interim exemption regime and pay a similar fee. This number is not expected to increase under the new regime.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. Although these collections have been approved previously by OMB under OMB control numbers 0648–0224 and 0648–0225, because of new collection requirements for commercial fishing in § 229.6 and slightly modified registration requirements under § 229.4, these collection requirements are being resubmitted to OMB for review and approval.

The average reporting burden for these collections is estimated to be approximately 0.25 hours for each of approximately 13,000 fishers to register each year and 0.17 hours for each report of marine mammal injury or mortality. Because fishers would be required to submit a report for each occurrence of marine mammal injury or mortality, there may be multiple reports required per fisher.

Send comments regarding these burden estimates or any other aspect of these collection of information requirements, including suggestions for reducing the burden, to the Chief, Marine Mammals Division, Office of Protected Resources, and to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

National Environmental Policy Act

The Assistant Administrator for Fisheries, NOAA (AA) has determined, based upon an EA prepared under the National Environmental Policy Act, that implementation of these regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA is available upon request (see **ADDRESSES**).

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: June 13, 1995.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR parts 216 and 229 are 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.*, unless otherwise noted.

2. Section 216.24 is amended by removing the phrase, under the Note to § 216.24: ''for the period from June 17, 1994, through September 1, 1995''.

3. Part 229 is revised to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

Subpart A—General Provisions

Sec.
229.1 Purpose and scope.
229.2 Definitions.
229.3 Prohibitions.
229.4 Requirements for Category I and II fisheries.
229.5 Requirements for Category III fisheries.
229.6 Reporting requirements.
229.7 Monitoring of incidental mortalities and serious injuries.
229.8 Publication of list of fisheries.
229.9 Emergency regulations.
229.10 Penalties.
229.11 Confidential fisheries data.
229.12 Consultation with the Secretary of the Interior.

Subpart B—Takes of Endangered and Threatened Marine Mammals

229.20 Issuance of permits.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations [Reserved]

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

Subpart A—General Provisions

§ 229.1 Purpose and scope.

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide exceptions from the Act's moratorium on the taking of marine mammals incidental to certain commercial fishing operations.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of this part also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations.

(g) The purpose of the regulations in this part is to reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

§ 229.2 Definitions.

In addition to the definitions contained in the Act and § 216.3 of this chapter, and unless the context otherwise requires, in this part 229:

Act or *MMPA* means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Authorization Certificate means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

Category I fishery means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level.

Category II fishery means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level and that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level. In the absence of information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is ''occasional'' by analogy or, if an analogy is not possible, the Assistant Administrator may, after public notice and opportunity for public comment regarding a fishery's incidental mortality and serious injury on a stock of marine mammals, place that fishery in Category II. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next annual list of fisheries is published.

Category III fishery means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

(1) 10 percent or less of any marine mammal stock's potential biological removal level, or

(2) More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is ''remote'' by analogy or, if an analogy is not possible, the Assistant Administrator may, after public notice and opportunity for public comment regarding a fishery's incidental mortality and serious injury on a stock of marine mammals, place that fishery in Category III.

Commercial fishing operation means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in § 216.3 of this chapter) activities and aquaculture activities.

Depleted species means any species or population that has been designated as depleted under the Act and is listed in § 216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

Fishery has the same meaning it does in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Fishing trip means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port.

Fishing vessel or *vessel* means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

Incidental, but not intentional, take means the non-intentional or accidental taking of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action.

Incidental mortality means the non-intentional or accidental death of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action.

Injury means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear or requires assistance to escape from entanglement in fishing gear will be considered injured regardless of the absence of any wound or other evidence of an injury.

Interaction means coming in contact with. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occur, or situations

where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

List of Fisheries means the most recent final list of commercial fisheries published in the **Federal Register** by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

Minimum population estimate means an estimate of the number of animals in a stock that:

(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

NMFS means the National Marine Fisheries Service.

Negligible impact has the same meaning as in § 228.3 of this chapter.

Net productivity rate means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

Nonvessel fishery means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

Observer means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

Potential biological removal level means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(1) The minimum population estimate of the stock;

(2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and

(3) A recovery factor of between 0.1 and 1.0.

Regional Fishery Management Council means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

Serious injury means any injury that will likely result in mortality.

Strategic stock means a marine mammal stock:

(1) For which the level of direct human-caused mortality exceeds the potential biological removal level;

(2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;

(3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or

(4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Plan means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Team means a team established to review methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Vessel owner or operator means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

Vessel of the United States has the same meaning it does in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Zero mortality rate goal is the reduction of the annual number of incidental mortalities and serious injuries in each fishery to insignificant levels approaching a zero mortality and serious injury rate. A fishery will have reached this goal when it is responsible for, collectively with other fisheries, the annual removal of:

(1) 10 percent or less of any marine mammal stock's potential biological removal level, or

(2) more than 10 percent of any marine mammal stock's potential biological removal level, but that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level and does not seriously injure or kill species listed as endangered or threatened under the Endangered Species Act or depleted under the MMPA. In addition, those fisheries that kill or seriously injure declining, depleted, threatened, or endangered stocks of marine mammals would have to be examined separately to determine that the incidental take is insignificant.

§ 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the taking of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.

(f) It is prohibited to willfully discard any fishing gear at sea, in whole or in part.

(g) It is prohibited to violate any regulation in this part.

§ 229.4 Requirements for Category I and II fisheries.

(a) *General.* For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of commercial fishing operations in a Category I or II fishery, the owner or authorized representative of a fishing vessel or non vessel fishing gear must annually register for and receive an Authorization Certificate. The granting and administration of authorizations under this part 229 may be integrated and coordinated with existing fishery license, registration, or permit systems and related programs, wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of authorizations is integrated into an existing program, NMFS will publish a notice in the **Federal Register** of where to register and efforts will be made to contact affected fishers via other appropriate means of notification.

(b) *Required information.* Owners of vessels or, for nonvessel fisheries, gear, must submit the following information when registering for an Authorization Certificate:

(1) Name, address, and phone number of owner;

(2) Name, address, and phone number of operator, if different from owner and if known, unless the name of the operator is not known or has not been established at the time the registration is submitted;

(3) Vessel name, length and home port; U.S. Coast Guard documentation number, or state registration number, state commercial vessel license number, and/or Tribal Permit number (as applicable);

(4) A list of all Category I and II fisheries in which the fisher will actively engage in during the calendar year;

(5) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used; and

(6) A certification, signed and dated by the vessel owner or authorized representative, as follows: ''I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge.''

(c) *Fee.* A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(d) *Address.* Unless the granting and administration of authorizations under part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to (a) of this section, requests for registration forms and completed registration forms should be sent to one of the following NMFS Regional Offices:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907–586–7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; telephone: 206–526–4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; telephone: 310–980–4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 508–281–9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 813–570–5301.

(e) *Issuance.* After receipt of a completed initial registration form and the required fee, NMFS will issue an Authorization Certificate and annual decal to the vessel owner. The Authorization Certificate will be renewed annually, and an annual decal issued, after receipt of an updated registration form, required fee, and statement (yes/no) regarding whether any marine mammals were incidentally killed or injured during the previous calendar year.

(f) *Authorization Certificate and decal requirements.* (1) The annual decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and annual decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(g) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(h) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS personnel, a designated contractor or an official onboard observer, or by a scientific research permit that is in the possession of the operator.

(i) *Monitoring.* Authorization Certificate holders must comply with the observer or other monitoring requirements specified under § 229.7.

(j) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with the guidelines for use in safely deterring marine mammals proposed at 60 FR 22345, May 5, 1995, § 216.29(c) of this chapter and are prohibited from using any deterrence measure proposed at FR 22345, May 5, 1995, § 216.29(d) of this chapter.

(k) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(l) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(m) *Expiration.* Authorization Certificates and annual decals expire at the end of each calendar year.

§ 229.5 Requirements for Category III fisheries.

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official onboard observer, or by a scientific research permit in the possession of the operator.

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(f).

(e) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch or other private property, or from endangering personal safety, vessel owners engaged in a

Category III fishery must comply with the guidelines for use in safely deterring marine mammals proposed at § 216.29(c) of this chapter and are prohibited from using any deterrence measure proposed at § 216.29(d) of this part.

(f) *Self-defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(g) *Emergency regulations.* Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.

§ 229.6 Reporting requirements.

(a) Vessel owners or operators engaged in any Category I, II, or III fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as FAX or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or serious injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The vessel owner or operator must provide the following information on this form:

(1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;

(2) The name and address of the vessel owner or operator;

(3) The name and description of the fishery, including gear type and target species; and

(4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(s) killed or injured must be provided if the species is unknown.

(b) Participants in nonvessel fisheries must include all of the information in paragraphs (a)(1) through (a)(4) of this section with the exception of the vessel name and registration number.

§ 229.7 Monitoring of incidental mortalities and serious injuries.

(a) *Purpose.* The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

(1) Obtain statistically reliable estimates of incidental mortality and serious injury;

(2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and

(3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may place observers aboard Category I and II vessels as necessary. Observers may, among other tasks:

(1) Record incidental mortality and injury, or bycatch of other target species;

(2) Record numbers of marine mammals sighted; and

(3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) *Observer requirements for Authorization Certificate holders.* (1) If requested by NMFS or a designated contractor providing observer services to NMFS, an Authorization Certificate holder engaged in a Category I or II fishery must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the Authorization Certificate holder must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The Authorization Certificate holder and crew must cooperate with the observer in the performance of the observer's duties including:

(i) Providing adequate accommodations;

(ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling marine mammal specimens, upon request by NMFS personnel;

(vii) Sampling, retaining and storing mammal specimens, upon request by NMFS personnel, designated contractors, or the onboard observer if adequate facilities are available and if feasible;

(viii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(ix) Not impairing or in any way interfering with the research or observations being carried out; and

(x) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals incidentally killed during fishing operations that are readily accessible to crew members must be brought aboard the vessel as biological specimens and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the aboard observer. Marine mammals so collected and retained as biological specimens must, upon request by NMFS personnel, designated contractors, or the aboard observer, be retained in cold storage aboard the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the aboard observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. Such biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(6) Any marine mammal incidentally taken may be retained only if authorized by NMFS personnel, designated contractors or an official onboard observer, or by a scientific research permit that is in the possession of the operator.

(d) *Observer requirements for Category III fisheries.* (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be

contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(ii) Has complied with § 229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner must comply with the requirements of § 229.7(c).

(e) *Alternative observer program*. The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

§ 229.8 Publication of list of fisheries.

(a) The Assistant Administrator will publish in the **Federal Register** notice of a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions for Category I, II, and III fisheries set forth in § 229.2; and

(2) List the marine mammals that interact with commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notice and opportunity for public comment. The revised final List of Fisheries will become effective no sooner than 30 days after publication in the **Federal Register**.

§ 229.9 Emergency regulations.

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect,

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Will take effect immediately upon publication in the **Federal Register** and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in subsection (d); and

(2) May be terminated by notice in the **Federal Register** at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

§ 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this Part shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on, or is in possession of the operator of the vessel shall be subject to a penalty of not more than $100.

(d) Failure to comply with take reduction plans or emergency regulations issued under part 229 may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan is also subject to penalties of 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or to comply with requirements to carry an observer, will result in suspension, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the full penalties of the Act.

(g) *Suspension, revocation or denial of Authorization Certificates.* (1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder:

(i) Fails to report all incidental mortality and serious injury of marine mammals as required under § 229.6;

(ii) Fails to take aboard an observer, if requested by NMFS or its designated contractors.

(2) The Assistant Administrator may suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to comply with any applicable take reduction plan, take reduction regulations, or emergency regulations developed under this subpart or subparts B and C of this part or if the Authorization Certificate holder fails to comply with other requirements of these regulations;

(3) A suspended Authorization Certificate may be reinstated at any time at the discretion of the Assistant Administrator provided the Assistant Administrator has determined that the reasons for the suspension no longer apply or corrective actions have been taken.

§ 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216–100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216–100. Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

§ 229.12 Consultation with the Secretary of the Interior.

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

Subpart B—Takes of Endangered and Threatened Marine Mammals

§ 229.20 Issuance of Permits.

(a) *Determinations.* During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels which have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7;

(ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations.* In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish a notice in the **Federal Register** of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the **Federal Register** a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization.* The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 for which determinations under the procedures of paragraph (b) of this section.

(d) *Category III fisheries.* Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority.* During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority under § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment.* The Assistant Administrator may temporarily suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify, after notice and opportunity for public comment, the list of fisheries published in accordance with § 229.21(b) whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters.* This subpart does not apply to the taking of Southern (California) sea otters.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations [Reserved]

[FR Doc. 95–14828 Filed 6–15–95; 8:45 am]

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50 CFR Part 227

[Docket No. 950427119–5149–03; I.D.060195E]

RIN 0648–AH98

Sea Turtle Conservation: Restrictions Applicable to Shrimp Trawling Activities; Additional Turtle Excluder Device Requirements Within Certain Statistical Zones; Hearings

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

ACTION: Proposed rule; notice of hearings.

SUMMARY: NMFS is proposing to impose, for a 30-day period beginning with the reopening of the waters off Texas, additional restrictions on shrimp trawlers fishing in Gulf of Mexico offshore waters out to 10 nautical miles (nm)(18.5 km) from the COLREGS line, along a portion of the Texas coast, between the Texas-Louisiana border and the line along 27° N. lat. This area includes nearshore waters in shrimp fishery statistical Zones 18, 19, and 20 and the westernmost portion of Zone 17 east to Sabine Pass, TX. The restrictions would include prohibitions on the use by shrimp trawlers of soft turtle excluder devices (TEDs), bottom-opening TEDs, flaps completely covering the escape opening of TEDs, and try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft or bottom-opening TEDs. These restrictions would prevent the reoccurrence of high levels of mortality and strandings of threatened and endangered sea turtles documented in Texas after the waters off Texas are reopened to shrimping.

DATES: Comments on this proposed rule must be submitted by July 3, 1995.

The hearings are scheduled as follows:

1. June 19, 1995, at 7 p.m., Galveston, TX
2. June 20, 1995, at 5 p.m., Rockport, TX

ADDRESSES: Comments on this proposed rule and requests for a copy of the environmental assessment (EA) or supplemental Biological Opinion prepared for this proposed rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

The hearings will be held at the following locations:

1. Texas-Galveston County Court House, (Jury room, 1st floor), 722 Moody Street, Galveston, TX 77550
2. Texas-Aransas County Court House (Commissioners Courtroom), 301 North Live Oak Street, Rockport, TX 78382.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, FAX: 813–570–5300 or Russell J. Bellmer, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of shrimp trawling activities have been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions set forth at 50 CFR 227.72. The incidental taking of turtles during shrimp trawling in the Gulf and Atlantic Areas is excepted from the taking prohibition, if the sea turtle conservation measures specified in the sea turtle conservation regulations (50 CFR part 227, subpart D) are employed. The regulations require most shrimp trawlers operating in the Gulf of Mexico and Southeast U.S. Atlantic to have a NMFS-approved TED installed in each net rigged for fishing, year round.

Recent Events

On April 30, 1995 (60 FR 21741, May 3, 1995), the sea turtle conservation measures were revised, for a 30-day period expiring on May 30, 1995, for shrimp trawlers fishing in nearshore waters along two sections of the Texas and Louisiana coast (statistical Zones 18 and 20, and a portion of Zone 17) in order to ensure that ongoing shrimp fishing would not likely jeopardize the continued existence of listed species of sea turtles and that the incidental take level identified in the incidental take statement (ITS) accompanying the Biological Opinion issued November 14, 1994 (BO) on shrimp fishing would not be exceeded, which would require reinitiation of consultation pursuant to 50 CFR 402.16. The revisions were imposed as temporary additional restrictions pursuant to 50 CFR 227.72(e)(6). This provision states that such restrictions may be imposed upon the determination of the Assistant Administrator for Fisheries, NOAA (AA), that continued takings of sea turtles by shrimp fishing are unauthorized, because they would violate the restrictions, terms and conditions of the ITS issued with the BO or would likely jeopardize the continued existence of a listed species. The BO specifically requires that such restrictions be imposed immediately when sea turtle takings, indicated or documented, reach 75 percent of the established incidental take levels. The restrictions imposed were necessitated by the continued high rates of sea turtle strandings occurring along areas of the Texas coast, and were consistent with the BO and the NMFS Shrimp Fishery Emergency Response Plan (ERP).

The BO required the development of a plan to respond to elevated stranding levels. The ERP provides a general statement of policy with respect to NMFS' enforcement practice and use of future rulemaking in response to elevated sea turtle strandings associated with shrimping effort and ensures compliance with sea turtle conservation regulations. The ERP was signed by the AA on March 14, 1995, and was immediately distributed widely among industry and environmental groups. A notice of availability of the ERP was published in the **Federal Register** on April 21, 1995 (60 FR 19885), and comments are being accepted. In addition, NMFS distributes weekly reports of stranding events and notices of enforcement efforts and restrictions being implemented. NMFS is currently in the process of revising the ERP based on comments received.

A complete discussion of sea turtle strandings in Texas was contained in the temporary restrictions published on May 3, 1995 (60 FR 21741), and only a summary of strandings is provided here. For the 3 consecutive weeks from April 9 through April 29, strandings in Zone 18 were 12, 16, 6 turtles per week, respectively. The temporary restrictions went into effect on April 30, and strandings for the 2 consecutive weeks beginning April 30 through May 13 were 8, and 8 turtles per week, respectively. Forty of the 50 total turtles stranded during this 5-week period were Kemp's ridleys. Texas offshore waters

out to 200 nm (370.6 km) were closed to shrimping on May 15, and only 1 turtle stranded in Zone 18 between May 14 and May 20. For the 3 consecutive weeks beginning April 9 and ending April 29, strandings in Zone 20 were 3, 3, and 16 turtles per week, respectively. Seven of the 22 turtles were Kemp's ridleys. The temporary restrictions went into effect on April 30, and only 3 turtles stranded in Zone 20 over the next 3 weeks. These strandings approach or exceed the indicated take levels established for those zones with the exception of Zone 18 following the closure of waters off Texas and Zone 20 following the effective date of the temporary restrictions.

While the ERP's approach is to respond to increases in strandings as they occur, this proposed rule seeks to anticipate and prevent strandings before they occur. Many of the comments that NMFS received on the temporary restrictions published on May 3 concerned the lack of prior notice and opportunity for public comment (see Comments on the Emergency Response Plan and Temporary Restrictions section below). NMFS seeks to address this criticism by providing prior notice and an opportunity for public comment through publishing this proposed rule, which would impose certain restrictions upon the reopening of the waters off Texas. Based on historical data, the thresholds identified in the ERP and ITS likely will be reached and perhaps exceeded shortly after the reopening of the waters off Texas if no additional restrictions are imposed (see Texas Closure section below). NMFS believes that, if the restrictions contained in this proposed rule are not imposed effective upon the reopening of the waters off Texas, the thresholds identified in the ERP will be met or exceeded and restrictions pursuant to 50 CFR 227.72(e)(6) will need to be imposed shortly thereafter, with little or no prior notice or opportunity for prior public comment and little or no delayed effective date. In addition, although this proposed rule is not based on the thresholds identified in the ERP having been reached, it would impose the same restrictions identified in the ERP and promulgated on May 3, and as modified on May 18, 1995 (60 FR 26691). Given the relationship between this rule, the ERP and the temporary restrictions imposed pursuant to 50 CFR 227.72(e)(6), NMFS considered the comments received on the ERP and the temporary restrictions imposed on May 3, 1995 in developing this proposed rule.

The Texas Closure

Every year, offshore waters along Texas boundaries are closed to shrimp fishing out to 200 nm (370.6 km) for approximately 6 to 8 weeks in the late spring and early summer. The Texas closure is coordinated each year by State and Federal fishery managers to allow shrimp to grow to more valuable sizes and increase profits in the fishery. The Texas closure began this year on May 15 and will end no later than July 15. The exact date of the reopening is set by the State of Texas, which monitors shrimp sizes and distributions to determine the optimum time to open the fishery. Over the last 5 years, the waters have always been reopened earlier than July 15.

The reopening of waters off Texas after the closure is usually marked by heavy shrimping activity, with many shrimp vessels from Texas and other states participating. Sea turtle strandings in Texas historically have been low during the closure and have increased dramatically when the waters off Texas were reopened to shrimping. A comparison of strandings during the last 4 weeks of the closure to strandings during the first 4 weeks following the reopening to shrimping, clearly illustrates this trend. For example, in 1990, 6 dead turtles stranded on Texas offshore beaches in the 4 weeks before reopening, while 51 dead turtles stranded in the 4 weeks following reopening. In 1991, the corresponding stranding rates were 4 and 21; in 1992, 3 and 25; in 1993, 4 and 24. In 1994, 9 dead sea turtles stranded in Texas during the 4 weeks prior to reopening, while 99 dead turtles stranded in the 4 weeks following reopening. These data suggest an 8½ fold increase in sea turtle strandings in Texas over the last 5 years following the reopening of the waters off Texas to shrimping.

NMFS and the U.S. Coast Guard maintained high levels of enforcement of TED requirements throughout the waters off Texas prior to the Texas closure. In addition, NMFS gear experts conducted skill-building workshops in Texas during the spring to assist shrimpers regarding the proper use of TEDs. Nonetheless, continued elevated sea turtle strandings occurred in two statistical zones in Texas where shrimp trawl effort was high, and this required NMFS to impose additional restrictions to conserve listed sea turtles in accordance with the ERP. Before the restrictions were implemented, total sea turtle strandings in Texas were occurring at the same rate seen in 1994, which had been determined to likely jeopardize the continued existence of the Kemp's ridley sea turtle. Upon imposing the restrictions, however, strandings were sharply reduced, as previously discussed.

Although NMFS and the U.S. Coast Guard will maintain high enforcement levels when Texas Gulf waters open, NMFS does not believe that this alone will be sufficient to maintain sea turtle mortalities within the incidental take level specified in the ITS accompanying the November 14, 1994, BO. Earlier this season, high enforcement presence alone was not sufficient to prevent the sea turtle mortalities that triggered the promulgation of restrictions in accordance with the ERP. The historical stranding patterns indicate that sea turtle strandings will likely rise very sharply when the waters off Texas reopen. Indicated take levels likely would be reached or exceeded in one or more zones in Texas, requiring NMFS to impose restrictions on an emergency basis, in accordance with the ERP.

Given the likelihood of elevated sea turtle strandings following the reopening of the waters off Texas to shrimping and the need to impose restrictions on the shrimp fishery as an emergency response thereto, NMFS believes that, in compliance with the ESA, it is in the best interests of the shrimp fishery and the conservation of listed sea turtles to impose restrictions on shrimp trawling upon the reopening of the waters off Texas. Shrimp industry representatives have stated that implementing emergency restrictions 2 weeks after the reopening would be disruptive to shrimpers at the height of the shrimp season.

Furthermore, immediate implementation of restrictions might impair their effectiveness because of difficulties in communicating the restrictions to those who must comply and the time necessary to come into compliance. If elevated sea turtle strandings continue, NMFS would have to take more restrictive steps to protect sea turtles. NMFS is, therefore, proposing this temporary rule, to be effective when waters off Texas reopen to shrimping, in order to protect listed sea turtles, reduce sea turtle strandings, reduce the possible need for further restrictive measures, avoid disruption of fishing activities, and give prior notice and an opportunity for prior comment. NMFS is proposing to impose the same restrictions that were in place in waters off Texas before the Texas closure, because many shrimpers are familiar with those restrictions and have already made modifications to their gear to bring that gear into compliance with the restrictions.

Comments on the Emergency Response Plan and Temporary Restrictions

As stated earlier, NMFS made the ERP available to all concerned parties, accepting comments, and is currently in the process of revising the ERP based on those comments. In addition, NMFS considered those comments in developing this proposed rule. One commenter objected to the possible restrictions on soft TEDs and asked that NMFS assess alternatives to flap restrictions. The required use of TEDs in try nets was stated to be acceptable and the commenter stated that many local fishermen already used TEDs in try nets. NMFS has also received proposals from several representatives of the shrimp fishery that set forth alternative restrictions that would limit nearshore fishing pressure and resulting levels of turtle capture, of which one has been submitted as a petition for rulemaking pursuant to section 553(e) of the Administrative Procedure Act (APA), and to which NOAA will respond. In addition, NMFS has received comments supporting the ERP and the imposition of additional restrictions on shrimp fishing.

NMFS received numerous comments on the temporary restrictions published on May 3, 1995 (60 FR 21741). These came primarily by telephone and at a meeting hosted by shrimp industry representatives and attended by NMFS personnel on May 5, 1995, as well as at additional meetings held between NMFS personnel and industry representatives on May 12 and May 19.

Many shrimpers stated that the prohibition on the use of all try nets without TEDs installed was unreasonable, because NMFS had not provided any alternative that would allow them to monitor their catch rates and catch composition, forcing them to fish inefficiently. NMFS subsequently modified the temporary restrictions (60 FR 26691, May 18, 1995) to allow certain small try nets to be used without TEDs installed.

NMFS also received many comments that both the ERP and the temporary requirements were developed and implemented without adequate notice and opportunity to comment, and without adequate time for the shrimpers to come into compliance with the temporary restrictions. In addition, several industry groups have recently filed suit against NMFS alleging failure to comply with sections 553(b) and 553(d) of the APA in promulgating of the ERP and the temporary restriction of May 3. The APA requirement does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure or practice, and the delayed effective requirement does not apply to interpretative rules and statements of policy. Additionally, the APA provides that an agency may for good cause find that advance notice and opportunity for comment, as well as a delayed effective date, may be impracticable, unnecessary or contrary to the public interest. Nevertheless, NMFS recognizes the concerns of shrimpers that prior notice, opportunity for prior public comment, and delayed effective date should be provided to the greatest extent possible. The purpose of the ERP is to provide notice to the public as to when and what additional restrictions NMFS likely is to impose as strandings of listed sea turtles increased or non-compliance with requirements increased. This proposed rule likewise serves to give the prior public notice an opportunity for prior public comment on restrictions before the thresholds in the ERP are met.

Provisions of the Proposed Rule

This proposed rule would prohibit fishing by shrimp trawlers (as defined in 50 CFR 217.12), starting 12:01 a.m. (local time) on the day of the reopening of the waters off Texas to shrimp fishing and ending 11:59 p.m. (local time) 30 days after the reopening, in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3′ W. long. (the Texas-Louisiana border), unless they are in compliance with the following prohibitions and all other applicable provisions in 50 CFR 227.72(e):

1. The use of soft TEDs described in 50 CFR is prohibited.

2. The use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

3. The use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.6 m) or less would be exempt from the TED-use requirement in accordance with paragraph (e)(2)(ii)(B)(*1*).

4. The use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing that is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening would be unchanged.

The proposed rule would suspend for a 30-day period all provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(*1*) (use of try nets), 50 CFR 227.72(e)(4)(iii) (Soft TEDs), 50 CFR 227.72(e)(4)(i)(F) (Position of escape opening), and 50 CFR 227.72(e)(4)(iv)(C) (Allowable modification to TEDs), that are not consistent with these prohibitions.

This proposed rule would also require owners and operators of shrimp trawlers in the area subject to temporary restrictions to carry a NMFS-approved observer aboard their vessel(s), if directed to do so by the Director, Southeast Region, NMFS, upon written notification sent to either the address specified for the vessel registration or documentation purposes, or otherwise served on the owner or operator of the vessel. Owners and operators and their crew would be required to comply with the terms and conditions specified in such written notification.

These restrictions would allow shrimp trawling to continue in the affected area while providing heightened protection for sea turtles. The use of those TEDs with the greatest potential for turtle capture would be prohibited. Although soft TEDs and bottom-opening TEDs have generally been approved for use, NMFS believes that they may not be as effective at releasing turtles, particularly small juvenile turtles, under some conditions, as top-opening hard TEDs. NMFS researchers have determined through recent in-water testing that small turtles require almost twice as long to escape from a bottom-opening TED than from a top-opening TED (average 125.6 seconds vs. average 68.8 seconds) under ideal conditions. NMFS has previously promulgated regulations to address and discuss other problems with bottom-opening hard TEDs (59 FR 33447, June 29, 1994; 60 FR 15512, March 24, 1995).

Try nets without an approved TED installed would be prohibited except for small try nets. While try nets have been exempted from the requirement to have a TED installed, because they are only intended for use in brief sampling tows not likely to result in turtle mortality, turtles are, however, caught in try nets. Either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including one mortality, have been documented by NMFS.

Finally, use of full length webbing flaps would be prohibited. While full length flaps have been permitted to help reduce shrimp loss with TEDs, such flaps may hinder turtle release. In a top-opening TED, high pressure is generated above the trawl net, which forces the webbing flap closed, while in a bottom-opening TED the weight of the TED grid can pin the webbing flap shut over the escape opening. Testing has shown that turtles escape more readily from TEDs with shortened flaps than from TEDs with long flaps (55.2 second average escape time vs. 68.8 second average escape time). Additionally, the webbing flap can be sewn shut to disable the TED deliberately. Underwater investigations of the performance of top-opening TEDs with shortened webbing flaps indicated that the shortened webbing flap should not contribute to any shrimp loss. Under this proposed rule, only approved hard TEDs and special hard TEDs with top escape openings and shortened flaps that do not cover the escape opening would be allowed in shrimp trawls in the affected area.

Additional Conservation Measures

The AA may issue a determination that incidental takings of listed species during fishing activities are unauthorized, and, pursuant thereto, may restrict fishing activities in order to conserve threatened and endangered species. The regulatory authority for this is codified at 50 CFR 227.72(e)(6), and guidance in determining unauthorized takings and in setting restrictions is set forth in the ERP. NMFS will continue to monitor sea turtle strandings and will implement the provisions of the ERP as necessary. If offshore sea turtle strandings in any statistical zones in Texas persist at or above 75 percent of the indicated take level for 4 weeks, NMFS will follow the guidance in the ERP to determine whether to limit fishing effort, as required, in the offshore waters of the zones affected by elevated strandings, seaward to 10 nm (18.5 km) from the COLREGS line, for a period of 30 days. Contiguous statistical areas or portions of those areas may be included in the restrictions as necessary. These restrictions may apply to gear types/vessels currently exempted from the TED requirement at 50 CFR 227.72(e)(2)(ii) (A) and/or (B). Area restrictions will be promulgated through emergency rulemaking notices pursuant to the procedures set forth at 50 CFR 227.72(e)(6).

Request for Comments

NMFS will accept written comments (see **ADDRESSES**) on this proposed rule for a 15-day period from date of publication in the **Federal Register**. In addition, NMFS will conduct two public hearings on this action (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have significant economic impact on a substantial number of small entities, because these restrictions would impose only a minor economic burden on shrimp fishermen. The predominant TED design in use in the affected area is a bottom-opening hard grid TED. Bottom-opening hard grid TEDs can be modified to comply with the requirements of this rule in one to two hours with little, if any, cost. Any webbing flap over the escape opening can be shortened in less than 10 minutes. Trawlers equipped with only soft TEDs would have to move out of the affected area, either offshore or alongshore, or to equip their nets with hard TEDs. Hard grid TEDs are available for as little as $75.00 and take only a few hours to install.

The AA prepared an EA for this proposed rule and copies are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: June 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(2)(v) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(v) *Gear requirements—Offshore waters along Texas*—(A) *Gear restrictions.* Any shrimp trawler is prohibited from fishing in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3′ W. long. (the Texas-Louisiana border) unless it is in compliance with the prohibitions in paragraphs (e)(2)(v)(A) (*1*) through (*4*) of this section, and all other applicable provisions to § 227.72(e), unless such provisions do not conform to the prohibitions in paragraphs (e)(2)(v)(A) (*1*) through (*4*) of this section. Any provision in this section, including but not limited to, paragraph (e)(2)(ii)(B)(*1*) of this section (use of try nets), paragraph (e)(4)(iii) of this section (Soft TEDs), paragraph (e)(4)(i)(F) of this section (Position of escape opening), and paragraph (e)(4)(iv)(C) of this section (Allowable modification to TEDs), that does not conform to the prohibitions in paragraphs (e)(2)(v)(A) (*1*) through (*4*) of this section is suspended for the duration of this rule.

(*1*) The use of soft TEDs is prohibited.

(*2*) The use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

(*3*) The use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.5 m) or less are exempt from the TED-use requirement in accordance with paragraph (e)(2)(ii)(B)(*1*) of this section.

(*4*) The use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing that is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening set forth in paragraph (e)(4)(i)(G) of this section apply (see Figure 14 to part 227).

(B) *Monitoring.* Shrimp trawlers operating in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3′ W. long. (the Texas-Louisiana border) must carry a NMFS-approved observer aboard such vessel(s) if directed to do so by the Southeast Regional, Director, upon written notification sent to either the address specified for the vessel registration or documentation purposes,

or otherwise served on the owner or operator of the vessel. Owners and operators and their crew must comply with the terms and conditions specified in such written notification. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws; such information may be used for enforcement purposes.

* * * * *

3. Figure 14 to part 227 is added to read as follows:

BILLING CODE 3510–22–W

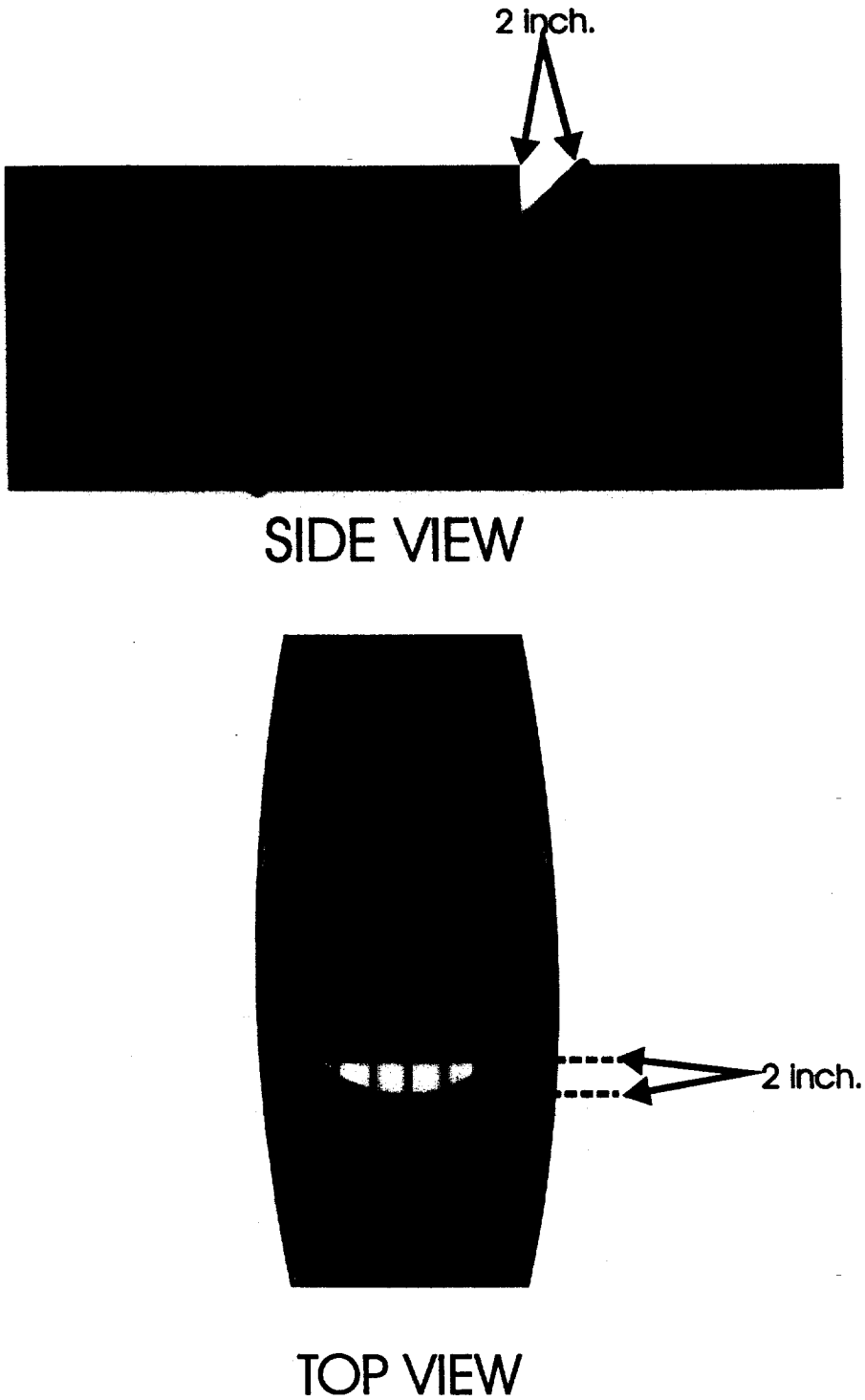

FIGURE 14 to part 227--Shortened Webbing Over the Escape Opening Complying With Requirement at 50 CFR 227.72(e)(2)v)(A)(4)

[FR Doc. 95–14826 Filed 6–13–95; 3:27 pm]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 9, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- National Resources Conservation Service, Long-term Contracting Conservation Plan of Operations, NRCS–LTP–1, 2, 11, 11A, 11B, 12, 20, 21 and 24, Individuals or households; Farms; 612,000 responses; 106,835 hours, Bobby Rakestraw (202) 720–1866.
- Food and Consumer Service, Recipient Food Stamp Trafficking—Addendum, Individuals or households; 864 responses; 936 hours, Sharron Cristofar (703) 305–2131.

Extension

- Animal and Plant Health Inspection Service, Report of Violations, PPQ Form 518, Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; 400 responses; 68 hours, Linda Mudd (301) 734–8420.
- Animal and Plant Health Inspection Service, Endangered Species Regulations and Forfeiture Procedures, PPQ Forms 368, 621, 623, 625, and 626, Business or other for-profit; 16,115 responses; 3,186 hours, Don Thompson (301) 734–8646.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–14751 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on July 20 and July 21, 1995 at the Miner's Inn Convention Center, 122 E. Miner Street in Yreka, California. The meeting will begin at 10:30 a.m. on July 20 and adjourn at 5:00 p.m. The meeting will reconvene at 8:00 a.m. on July 21 and continue until 3:00 p.m. Agenda items to be covered include: (1) Mission and purpose of the Advisory Committee; (2) operating guidelines and ground rules; (3) Klamath PAC issues identification and prioritization; and (4) a public comment period. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Jim Anderson, USDA, Klamath National Forest, at 1312 Fairland Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1300.

Dated: June 13, 1995.

Robert J. Anderson,

Land Management Planning Staff Officer.

[FR Doc. 95–14867 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Municipal Interest Rates for the Third Quarter of 1995

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the third quarter of 1995.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the third calendar quarter of 1995.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning July 1, 1995, and ending September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230-s, 14th Street & Independence Avenue, SW. AgBox 1522, Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the third calendar quarter of 1995 for municipal rate electric loans. Pursuant to regulations originally published by the Rural Electrification Administration (REA) at 7 CFR 1714.5, the interest rates on advances from municipal rate loans are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub.L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the third calendar quarter of 1995.

Interest rate term ends in (year)	Interest rate (0.000 percent)
2016 or later	5.750
2015	5.750
2014	5.750
2013	5.750
2012	5.625
2011	5.625
2010	5.500
2009	5.500
2008	5.375
2007	5.375
2006	5.250
2005	5.125
2004	5.000
2003	5.000
2002	4.875
2001	4.750
2000	4.625
1999	4.500
1998	4.500
1997	4.375
1996	4.125

Dated: June 8, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–14753 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–95]

Foreign-Trade Zone 2, New Orleans, LA; Proposed Foreign-Trade Subzone Mobil Corporation, (Oil Refinery Complex) New Orleans, Louisiana, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, requesting special-purpose subzone status for the oil refinery complex of Mobil Corporation, located in St. Bernard/Jefferson/St. Charles Parishes, Louisiana (New Orleans area). 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 June 8, 1995.

The refinery complex (400 acres) consists of 3 sites in St. Bernard/Jefferson/St. Charles Parishes, Louisiana: *Site 1* (310 acres)—main refinery and petrochemical feedstock complex located on the Mississippi River at 500 West St. Bernard Highway, Chalmette, St. Bernard Parish, some 5 miles east of New Orleans; *Site 2* (200,000 barrel leased capacity)—Amerada Hess Tank Farm, located at 200 Douglass Road, Jefferson Parish, some 10 miles west of the refinery; *Site 3* (236,000 barrel leased capacity)—GATX Tank Farm, located at 1601 River Road, St. Charles Parish, some 20 miles west of the refinery.

The refinery (191,000 barrels per day; 690 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels, and naphthas. Petrochemicals include methane, ethane, propane, benzene, toluene, xylenes, and butane. Refinery by-products include petroleum coke and sulfur. Some 55 percent of the crude oil (90 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery'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 August 15, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 30, 1995).

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 District Office, Hale Boggs Federal Building, 501 Magazine Street, Room 1043, New Orleans, Louisiana 70130

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 8, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–14819 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(32b1)–8–95 Docket A(32b1)–9–95]

Requests for Modification of Restrictions

In the matter of: Foreign-Trade Zone 122—Corpus Christi, TX Subzone 122I; CITGO Refining and Chemicals, Inc. (Crude Oil Refinery Complex) and Foreign-Trade Zone 87—Lake Charles, LA, Subzone 87B, CITGO Petroleum Corporation (Crude Oil Refinery Complex)

Requests have been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, and the Lake Charles Harbor & Terminal District, grantee of FTZ 87, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of FTZ Board Order 407 (53 FR 52457, 12/28/88) and Board Order 420 (54 FR 27660, 6/30/89), which authorized subzone status at the crude oil refinery complexes of CITGO Refining and Chemicals, Inc. in Corpus Christi, Texas (Subzone 122I), and CITGO Petroleum Corporation in Lake Charles, Louisiana (Subzone 87B), respectively. The requests were formally filed on June 9, 1995.

The Board Orders in question were issued subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise. The zone grantees have requested that the latter restriction be modified in each Board Order so that CITGO would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: benzene, toluene, xylenes, other aromatic hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphtha, natural gas, ethane, propane, butane, ethylene, propylene, butylene, butadiene, cumene, petroleum coke, paraffin wax, asphalt, sulfur, and sulfuric acid.

The requests cite the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95), which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal 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 July 17, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 12, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14820 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Charleston, SC

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Charleston, South Carolina MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, May 10, 1995, Vol. 60, No. 90, 24838.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–14818 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–21–P

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license to practice the invention embodied in U.S. Patent Serial Number 08/328,806, titled, ''Transparent Carbon Nitride Films, Process For Making Carbon Nitride Films And Compositions Of Matter Comprising Transparent Carbon Nitride Films'' to Structured Materials Industries, Inc., having a place of business in Piscataway, New Jersey. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT:

Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20852.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

The prospective exclusive license may be granted unless, within sixty days form the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Serial Number 08/328,806 relates generally to transparent carbon nitride films and more particularly to transparent carbon nitride films for use in optical or solar energy devices. It also relates to processes for making transparent carbon nitride films, and compositions of matter comprising transparent carbon nitride films.

NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 60, No. 55 (March 22, 1995). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: June 8, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–14776 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

June 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, 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 or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for unused carryforward and special carryforward. The limits for Categories 334/634, 336/636/836 and 342/642/842 are being increased an additional 5 percent for garments made from locally-woven, handloomed fabrics.

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 59 FR 65531, published on December 20, 1994). Also see 60 FR 13410, published on March 13, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 12, 1995.

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 March 7, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 15, 1995, you are directed to amend the directive dated March 7, 1995 to increase the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
331/631	2,225,054 dozen pairs.
334/634	490,660 dozen.
335/835	228,705 dozen.
336/636/836	377,690 dozen.
340/640	1,059,496 dozen.
341/641	1,749,668 dozen of which not more than 1,113,681 dozen shall be in Category 341 and not more than 1,166,445 dozen shall be in Category 641.
342/642/842	621,312 dozen.
347/348/847	1,153,754 dozen.
351/651	294,170 dozen.
352/652	1,213,799 dozen.
635	293,735 dozen.
840	252,596 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–14779 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 17, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Cover Assembly, Generator 2805–00–356–1985
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California

Services

Grounds Maintenance
Nogales Border Station (West), Nogales, Arizona
NPA: Santa Cruz Training Programs, Inc., Nogales, Arizona
Grounds Maintenance
Department of Veterans Affairs Medical Center, San Francisco, California
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California
Janitorial/Custodial
U.S. Army Reserve Training Center, Buildings 104, 105, 106, 107, 108, 109, 140, 141, 144 and 145, Arlington Heights, Illinois
NPA: Clearbrook Center, Inc., Rolling Meadows, Illinois
Mailing Service
Fleet and Industrial Supply Center, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California
Switchboard Operation
Department of Veterans Affairs Medical Center, Palo Alto, California
NPA: Project Hired, Inc., Sunnyvale, California.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Enamel, Lacquer
8010–00–936–8366
8010–00–936–8367
8010–00–936–8369
8010–00–936–8370
8010–00–936–8371

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–14789 Filed 6–15–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Cotton Exchange as a Contract Market in Futures and Futures Options on the Emerging Market Debt Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Commodity Futures Trading Commission previously published in the **Federal Register** a proposal of the New York Cotton Exchange (NYCE or Exchange) for designation as a contract market in futures and futures options on the emerging market debt index. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE emerging market debt index designation applications.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: On October 5, 1995, the Commission published in the **Federal Register** a notice of availability of the NYCE's terms and conditions for the emerging market debt index futures and futures option contracts (59 FR 50730). As noted, the Director of the Division has determined that, for these proposed contracts, an additional comment period is warranted.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 9, 1995.

John Mielke,

Acting Director.

[FR Doc. 95–14755 Filed 6–15–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

21st Century Community Learning Centers

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards and notice of final priority for fiscal year (FY) 1995—correction.

On June 9, 1995, the Assistant Secretary for Educational Research and Improvement published in the **Federal Register** a notice inviting applications for new awards (60 FR 30756) and a notice of final priority (60 FR 30757) for FY 1995 for the 21st Century Community Learning Centers Program. The purpose of this notice is to amend those notices.

In the notice inviting applications for new awards, add to the eligible applicants section a school or consortia of schools located in areas designated as Urban Enhanced Enterprise Communities.

In the notice of final priority, the priority is amended to include a school or consortia of schools located in areas designated as Urban Enhanced Enterprise Communities. These areas are Boston, Massachusetts; Houston, Texas; Kansas City, Kansas and Kansas City, Missouri; and Oakland, California. These cities were inadvertently omitted from the original notices.

FOR FURTHER INFORMATION CONTACT: Seresa Simpson, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 219–1935. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 8241–8246.

Dated: June 9, 1995.

(Catalog of Federal Domestic Assistance Number 84.287, 21st Century Community Learning Centers Program.)

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–14761 Filed 6–15–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR95–14–000]

Louisiana Resources Pipeline Co., L.P.; Notice of Petition for Rate Approval

June 12, 1995.

Take notice that on June 1, 1995, Louisiana Resources Pipeline Company, L.P. (LRP) filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.2756 per MMBtu for Transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

LPR states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and it owns and

operates an intrastate pipeline system in the State of Louisiana. LPR proposes an effective date of June 1, 1995.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 27, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14742 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–543–000]

Northern Natural Gas Co.; Notice of Application for Abandonment

June 12, 1995.

Take notice that on June 5, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed, in Docket No. CP95–543–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for permission and approval to abandon, as non-jurisdictional facilities, by sale to Highlands Gathering and Processing Company (Highlands), certain compression, pipeline facilities, and delivery points, with appurtenances, located in Crockett, Schleicher, Sutton, and Val Verde Countries, Texas, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it has entered into an April 21, 1995, Asset Purchase Agreement with Highlands pursuant to which Highlands will acquire from Northern approximately 128 miles of pipeline with pipe diameters ranging between four to sixteen inches in Crockett, Schleicher, Sutton and Val Verde Counties, Texas, and seven transmission lateral compressor stations located in Crockett, Schleicher, and Sutton Counties, Texas. Additionally, Northern proposes to abandon and convey to Highlands all farm taps, interconnecting points, and delivery points located on the subject facilities. Northern relates that the facilities which it proposes to abandon and convey to Highlands include the following segments: Highlands include the following segments: Hulldale Segment, Hullidale Loop Segment, Hunt-Baggett Segment, and Vinegarone Segment. Northern states that the segment facilities will be conveyed to Highlands for $3.1 million. Northern says that the subject facilities were constructed as gas supply facilities in order for Northern to fulfill its merchant sales obligation but are no longer needed by Northern as its role in the marketplace has changed from a merchant or natural gas to a transporter of natural gas.

Northern notes that Highlands will file a companion filing, a Petition for Declaratory Order, which will seek a determination that the subject facilities of this abandonment application, once conveyed to Highlands, are gathering facilities, not subject to the Commission's jurisdiction pursuant to NGA Section 1(b). The petition was filed June 6, 1995, in docket No. CP95–547–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements to the Commission's Rules and Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designed on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matters finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14743 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–532–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

June 12, 1995.

Take notice that on June 1, 1995, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–532–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new delivery point for service to U.S. Pipe and Foundry Company (U.S. Pipe) under Southern's blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to U.S. Pipe at a new delivery point for service on Southern's Bessemer Lateral in Jefferson County, Alabama. Southern states that it proposes to locate the delivery point at or near Mile Post 1.558 on Southern's Bessemer Lateral in Jefferson County, Alabama. Specifically, the facilities at the delivery point will consist of a 4-inch orifice meter and a 3-inch rotary meter, tie-in piping, electronic custody transfer equipment (ECT Equipment) and the necessary appurtenant facilities. The estimated cost of the construction of the facilities is approximately $219,000. U.S. Pipe has complied with all the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff for the installation of the direct delivery connection by Southern and will reimburse Southern for the cost of the facilities.

Southern states that it will transport gas on behalf of U.S. Pipe pursuant to its Rate Schedule IT. Southern states

that the installation of the proposed delivery point facilities and the transportation provided thereunder will have no adverse effect on its firm requirements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14744 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1034–000]

IGI Resources, Inc.; Notice of Filing

June 9, 1995.

Take notice that on May 30, 1995, IGI Resources, Inc., (IGI) tendered for filing and acceptance a supplement to its Application submitted in this proceeding on May 11, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol 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 18 CFR 385.214). All such motions or protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14793 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–47–000, et al.]

Megan-Racine Associates, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 9, 1995.

Take notice that the following filings have been made with the Commission:

1. Megan-Racine Associates, Inc.

[Docket Nos. EL95–47–000, EL95–40–000 and QF89–58–001]

On May 23, 1995 Megan-Racine Associates, Inc. (Megan-Racine) filed a request for temporary waiver of the Commission's operating and efficiency standards for the years 1991, 1992, 1993 and 1994.

Megan-Racine's request for waiver was included in its filing of an answer to the April 21, 1995 petition for a declaratory order revoking the qualifying status of a topping-cycle cogeneration facility filed by Niagara Mohawk Power Corporation (Niagara Mohawk) in Docket No. EL95–40–000. The facility, owned by Megan-Racine Associates, Inc. in Canton, New York, was granted certification as a qualifying cogeneration facility in an order dated January 27, 1989. *Megan-Racine Associates, Inc.*, 46 FERC ¶ 62,074 (1989). Niagara Mohawk claimed in its petition that for the years 1991, 1992, 1993, and 1994 the facility did not meet the applicable operating and efficiency standards applicable to natural gas-fired, topping-cycle qualifying cogeneration facilities under section 292.205 of the Commission's regulations. 18 CFR 292.205. Niagara Mohawk asked the Commission to declare that the facility was not a qualifying facility for the years 1991, 1992, 1993, and 1994 and asks the Commission to revoke certification for the years 1991, 1992, 1993 and 1994. In its answer to Niagara Mohawk's petition, Megan-Racine asserts that at all times its facility operated in compliance with the Commission's technical requirements. In the alternative, Megan-Racine asks that the Commission, if it finds that the facility did not operate in compliance with the operating and efficiency standards, grant waiver for the years that non-compliance is found.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Torco Energy Marketing, Inc.

[Docket No. ER92–429–005]

Take notice that on May 22, 1995, Torco Energy Marketing, Inc. filed certain information as required by the Commission. Copies of Torco's informational filing are on file with the Commission and are available for public inspection.

3. Cenergy, Inc.

[Docket No. ER94–1402–001]

Take notice that on May 23, 1995, Cenergy, Inc. (Cenergy) filed certain information as required by the Commission. Copies of Cenergy's informational filing are on file with the Commission and are available for public inspection.

4. Mississippi Power Company

[Docket No. ER95–220–000]

Take notice that on May 1, 1995, Mississippi Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER95–761–000]

Take notice that New England Power Company on May 2, 1995, tendered a request for deferral of action in this docket.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota)

[Docket No. ER95–867–000]

Take notice that May 25, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing an amendment to the original Installation and Ownership Agreement filed on April 4, 1995, between NSP and Minnkota Power Cooperative, Inc. (MPC). The agreement allows MPC to double circuit a quarter of a mile of an existing NSP transmission line between NSP's Prairie and Gateway Substations. The amendment provides a complete breakdown of the estimated costs associated with the project.

NSP requests that the Commission accept for filing this amendment effective as of August 1, 1995. NSP requests that the amendment be accepted as a supplement to Rate Schedule No. 284, the rate schedule for previously filed agreements between NSP and MPC.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Progas Power, Incorporated

[Docket No. ER95–968–000]

Take notice that on June 5, 1995, Progas Power, Incorporated tendered for filing an amendment in the above-referenced docket.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER95–1132–000]

Take notice that on May 31, 1995, Arizona Public Service Company (APS), tendered for filing Amendments under the following Rate Schedules:

Rate schedule	Customers	Amendments
FPC 68	Electrical District No. 1.	Amendment No. 1.
FERC 126	Electrical District No. 6.	Do.
FERC 128	Electrical District No. 7.	Do.
FERC 140	Electrical District No. 8.	Do.
FERC 141	Aguila Irrigation District.	Do.
FERC 142	McMullen Valley Water Conservation and Drainage District.	Do.
FERC 143	Tonopah Irrigation District.	Do.
FERC 153	Harquahala Valley Power District.	Do.
FERC 155	Buckeye Water Conservation and Drainage District.	Do.
FERC 158	Roosevelt Irrigation District.	Do.
FERC 168	Maricopa County Municipal Water Conservation District No. 1.	Do.

The Amendments provide for the two-year extension of the suspension of a 12-month billing demand ratchet included in the current Wholesale Power Agreements applicable to each of the above listed irrigation resale class customer (Districts). Current rate levels are unaffected and all other rates, terms and conditions for each District are not changed from those currently on file with the Commission.

APS and the above Districts request waiver of the Commission's Notice Requirements in 18 CFR 35.3(a) under § 35.11 to allow the Amendment to become effective June 1, 1995.

A copy of this filing has been served on the Districts and the Arizona Corporation Commission.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. The Washington Water Power

[Docket No. ER95–1134–000 Company]

Take notice that on May 31, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, an Agreement for the sale of 100 MW of firm energy and 150 MW of winter season peaking capacity and associated energy (fifty percent load factor) to Public Utility District No. 1 of Clark County, Washington (Clark) for an initial period of three years.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service

[Docket No. ER95–1136–000 Company]

Take notice that on May 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Old Dominion Electric Cooperative (ODEC) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to ODEC.

NUSCO requests that the Service Agreement become effective on July 1, 1995.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service

[Docket No. ER95–1138–000 Company]

Take notice that on May 31, 1995, Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, comparable ''Transmission Tariffs''. Pursuant to the terms of the Transmission Tariffs, SPS will offer Network Integration Service, Firm and Non-Firm Point-to-Point Transmission Service, as well as a variety of Ancillary Services.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ES94–13–002]

Take notice that on June 7, 1995, UtiliCorp United Inc. (UtiliCorp) filed an amendment to its application in Docket Nos. ES94–13–000 and ES94–13–001, under § 204 of the Federal Power Act. By letter order dated March 1, 1994, (66 FERC ¶ 62,109), UtiliCorp was authorized to issue corporate guaranties in support of Secured Debentures in an amount of not more than $40 million (Canadian) to be issued by West Kootenay Power, Ltd. (WKP) during 1994 and 1995. UtiliCorp requests that the authorization be amended to authorize UtiliCorp to issue corporate guaranties in support of secured or unsecured debt obligations of WKP during 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. IES Utilities Inc.

[Docket No. ES94–20–002]

Take notice that on June 7, 1995, IES Utilities Inc. (IES) filed an amendment to its application in Docket Nos. ES94–20–000 and ES94–20–001, under § 204 of the Federal Power Act. By letter order dated April 11, 1994, (67 FERC ¶ 62,040), IES was authorized to issue, over a two-year period, not more than $250 million of long-term notes or collateral trust bonds including $100 million of collateral trust bonds to be issued to Metropolitan Life Insurance Company (Met Life) or an affiliate of Met Life. The anticipated placement with Met Life or an affiliate of Met Life did not take place. IES requests that the authorization be amended to authorize IES to issue not more than $250 million of long-term notes or collateral trust bonds without specifying any purchaser.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. The Washington Water Power Company

[Docket No. ER95–1135–000 Company]

Take notice that on May 31, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, a unit contingent agreement and backup agreement for the sale of 10 MW of firm capacity and associated energy to the Eugene Water and Electric Board, Eugene, Oregon for an initial period of five years.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR

385.214). All such motions or protests should be filed on or before the Comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14739 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP90–1849–003, et al.]

The Washington Water Power Company, et al.; Natural Gas Certificate Filings

June 8, 1995.

Take notice that the following filings have been made with the Commission:

1. The Washington Water Power Company

[Docket No. CP90–1849–003]

Take notice that on June 2, 1995, The Washington Water Power Company (''Water Power''), East 1411 Mission Avenue, Spokane, Washington 99202, filed an application under Section 7 of the Natural Gas Act for authority to amend its existing certificate to allow for the continuation, for a limited term, the release of a portion of its Jackson Prairie Storage Project deliverability and capacity to Cascade Natural Gas Corporation (Cascade), all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Water Power states that it is a local distribution company engaged in the business of distributing natural gas within the states of Washington, Oregon, California and Idaho. Water Power explains that is a one-third owner of a natural storage field located in Lewis County, Washington, referred to as the Jackson Prairie Storage Project (Jackson Prairie). Water Power explains that the remaining undivided ownership interests belong to Northwest Pipeline Corporation and Washington Natural Gas Company, with the latter designated as the Project Operator.

Water Power explains that Cascade and Water Power previously entered into an Agreement dated July 23, 1990, entitled ''Release of Jackson Prairie Storage Capacity'' (Release Agreement). Water Power explains that the Release Agreement calls for the release of 150,000 therms per day of firm deliverability, 55,328 therms per day of ''best efforts'' deliverability, and 4,800,000 therms of seasonal capacity to Cascade. Water Power states that the Release Agreement provided for an initial term expiring on April 30, 1995.

Water Power proposes to continue the release of Jackson Prairie deliverability and capacity for an additional limited term expiring on April 30, 1998, with pregranted abandonment. Water Power states that the release would be on the same terms and conditions as previously approved by the Commission.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP90–2158–002]

Take notice that on June 2, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an application in Docket No. CP90–2158–002, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for authority to amend existing certificate and abandonment authorizations to permit a three year continuation beyond the originally scheduled April 30, 1995 expiration date, until April 30, 1998, all as more fully described in the application which is on file with the Commission and available for public inspection.

Northwest states that the Commission's November 23, 1990 order authorized Washington Water Power Company (Water Power), pursuant to an agreement dated July 23, 1990 (Release Agreement), to release 480,000 dth of storage capacity, 15,000 Dth per day of firm deliverability and 5,533 Dth per day of best efforts deliverability to Cascade Natural Gas Corporation (Cascade) all attributable to Water Power's ownership share of the Jackson Prairie Storage Project (Jackson Prairie), for a limited term expiring April 30, 1995. Northwest explains that the November 23, 1990 order authorized Northwest to correspondingly reduce its existing Rate Schedule SGS–1 storage service obligations to Water Power and to provide replacement Rate Schedule SGS–1 service to Cascade, both for a limited term expiring April 30, 1995.

Northwest states that by an April 28, 1995 amendment to the Release Agreement, Water Power and Cascade have agreed to extend the release of Jackson Prairie capacity and deliverability for an additional three years. Northwest requests amendments to its existing limited term abandonment and certificate authorizations to reflect continuation of the release-related Rate Schedule SGS–1 service changes until April 30, 1998.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Mojave Pipeline Company

[Docket No. CP95–522–000]

Take notice that on May 25, 1995, Mojave Pipeline Company (Mojave), 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309, filed in Docket No. CP95–522–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to upgrade an existing delivery point, located in San Bernardino County, California to accommodate increased natural gas deliveries under Mojave's blanket certificate issued in Docket Nos. CP89–001–000 and CP89–002–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Mojave proposes to upgrade its existing Hector Delivery Point in order to deliver up to 280,000 MMBtu of natural gas per day to Southern California Gas Company and other potential customers. Mojave states that it would install an additional 12-inch meter tube, costing approximately $70,000, to provide additional delivery capacity. Mojave asserts that increased gas deliveries through the new facilities would have no impact on its ability to make peak day and annual deliveries. Mojave also states that this application will not have any effect on its pending rate case in Docket No. RP95–175–000.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP95–533–000]

Take notice that on June 1, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed a request with the Commission in Docket No. CP95–533–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) to construct and operate appurtenant facilities at an existing delivery tap authorized in blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to construct and operate appurtenant facilities at an

existing delivery tap located in Mercer County, Pennsylvania, The proposed facilities would provide service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution). National states that the actual construction would consist of replacing an obsolete regulator with a regulator having a higher designed capacity that would improve efficiency, flexibility and reliability. The estimated cost of the upgraded regulator would be $500, which National reports as being less costly than replacing the regulator with the same model.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP95–534–000]

Take notice that on June 1, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–534–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, effective December 1, 1995:

(1) A total maximum daily withdrawal quantity (dwq) of 100,573 Mcf of firm storage service authorized in Docket No. CP76–517–000 under Natural's Rate Schedule LS–2 for all four (4) of its remaining Rate Schedule LS–2 customers. Natural further requests authority to terminate and cancel its Rate Schedule LS–2; and

(2) A total maximum dwq of 17,954 Mcf of firm storage service authorized in Docket No. CP78–175–000 under Natural's Rate Schedule LS–3 for all five (5) of its remaining Rate Schedule LS–3 customers. Natural further requests authority to terminate and cancel its Rate Schedule LS–3.

Natural states it currently provides storage services under its Rate Schedules LS–2 and LS–3 up to a total maximum dwq of 100,573 Mcf and 17,954 Mcf, respectively, for the customers listed below:

Name of Rate Schedule LS–2 customer	Maximum DWQ (/Mcf)
Associated Natural Gas Company	600
North Shore Gas Company	30,000
The Peoples Gas Light and Coke Company	68,412
Wisconsin Natural Gas Company	1,561
Total	100,573

Name of Rate Schedule LS–3 customer	Maximum DWQ (/Mcf)
I.E.S. Utilities, Inc.	2,031
Iowa Illinois Gas and Electric Company	14,000
Midwest Gas	580
City of Nebraska City, Nebraska	343
Wisconsin Natural Gas Company	1,000
Total	17,954

Natural states it has provided Rate Schedule LS–2 and LS–3 storage services for the above customers as authorized in Docket Nos. CP76–517–000 and CP78–175–000, respectively. Natural states that its Rate Schedule LS–2 and LS–3 service agreements will expire December 1, 1995. Natural further states that its customers with expiring contracts have an option to remain storage customers on Natural by electing ''open access'' services under procedures as approved in Docket No. RP95–242–000.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP95–535–000]

Take notice that on June 1, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–535–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, effective December 1, 1995: a total maximum daily withdrawal quantity (dwq) of 1,480,800 Mcf of firm storage service authorized in Docket Nos. G–1757, G–6674, G–15328, G–18448, CP60–28, CP61–97, CP62–79, CP62–256, CP64–113, CP65–169, CP66–169, CP68–164, CP69–164, and CP70–119 under Natural's Rate Schedule S–1 for all thirteen (13) of its remaining S–1 customers. Natural further requests authority to terminate and cancel its Rate Schedule S–1.

Natural states it currently provides storage services under its Rate Schedule S–1 up to a total maximum dwq of 1,480,800 Mcf for the customers listed below:

Name of Rate Schedule S–1 customer	Maximum DWQ (/Mcf)
Associated Natural Gas Company	1,838
Illinois Power Company	33,976
Interstate Power Company	9,003
I.E.S. Utilities, Inc.	30,460
Iowa-Illinois Gas and Electric Company	160,081
Midwest Gas	16,421
City of Nebraska City, Nebraska	4,462
Northern Illinois Gas Company	464,768
Northern Indiana Public Service Company	166,238
North Shore Gas Company	53,029
The Peoples Gas Light and Coke Company	527,810
Sullivan, Illinois, City of	1,693
Wisconsin Natural Gas Company	11,021
Total	1,480,800

Natural states that of its thirteen (13) remaining Rate Schedule S–1 customers, all but four (4) of these customer's service agreements have or will expire on or before December 1, 1995. Natural states its Rate Schedule S–1 service agreements with Midwest Gas, City of Nebraska City, Nebraska, Northern Illinois Gas Company, and Northern Indiana Public Service Company expire on April 1, 1996. Natural states that these four service agreements will be automatically converted to replacement ''open access'' service agreements for their remaining terms. Natural states that customers with expiring contracts have an option to remain storage customers on Natural by electing ''open access'' service under procedures approved in Docket No. RP95–242–000.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

7. Williston Basin Interstate Pipeline Company

[Docket No. CP95–546–000]

Take notice that on June 6, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP95–546–000 an application pursuant to Section 7(b) of the Natural Gas Act, requesting permission and approval to abandon approximately 13.4 miles of transmission pipeline in Sheridan and Johnson Counties, Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williston Basin states that it proposes to abandon approximately 13.4 miles of the 8-inch Billy Creek-Sheridan transmission line beginning in Johnson County, Wyoming and terminating in Sheridan County, Wyoming. It is averred that the Billy Creek-Sheridan line was installed in 1930 and that severe corrosion and leaks have been found throughout the line. This proposal represents a companion to Williston Basin's request in Docket

No. CP95–233–000, where Williston Basin proposes to replace approximately 13.4 miles of its Billy Creek Sheridan transmission line in Johnson and Sheridan Counties, Wyoming. It is stated that the facilities will be abandoned in place and are located entirely on existing right-of-way.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest 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 Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14740 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–547–000, et al.]

Highlands Gathering and Processing Company, et al.; Natural Gas Certificate Filings

June 9, 1995.

Take notice that the following filings have been made with the Commission:

1. Highlands Gathering and Processing Company

[Docket No. CP95–547–000]

Take notice that on June 6, 1995, Highlands Gathering and Processing Company (Highlands), Highland Place I, 8085 S Chester Street, Suite 114, Englewood, Colorado 80112, filed a petition in Docket No. CP95–547–000, requesting that the Commission declare that certain West Texas facilities to be acquired by Highlands from Northern Natural Gas Company (Northern) are gathering facilities within the meaning of Section 1(b) of the Natural Gas Act (NGA) and therefore, exempt from Commission jurisdiction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Highlands relates that it currently owns and operates extensive facilities for the gathering, treating, and processing of natural gas in the Permian Production Area of West Texas, and that all of its current operations are exempt from Commission jurisdiction pursuant to NGA Section 1(b). Highlands states that it does not perform any jurisdictional transportation services.

It is stated that on April 21, 1995, Highlands, Northern, and Highlands Gas Corp. entered into an Asset Purchase Agreement pursuant to which Highlands will acquire from Northern approximately 127 miles of four inch to sixteen inch pipeline, in addition to seven compression stations, all of which are upstream of Northern's transmission facilities which commence at the El Dorado compressor station. Upon completion of the acquisition of the facilities, Highlands asserts that it will use them in combination with its existing gathering system to gather and process gas and to offer a full range of services on terms dictated by market conditions to producers and gas purchasers.

Highlands notes that Northern has filed in Docket No. CP95–543–000, a companion abandonment application pursuant to Section 7(b) of the NGA, for permission to abandon, by sale to Highlands, the subject facilities, with appurtenances, located in Crockett, Schleicher, Sutton, and Val Verde Counties, Texas.

Highlands states that the facilities consist of three interconnected pipeline segments: the Hunt-Baggett Segment, the Vinegarone Segment and the Hulldale Segment, which intersect at the El Dorado compression station. Highlands says it intends to operate the segments as an integrated single system for the purpose of gathering. Highlands indicates that the seven compressor stations are rated at between 75 and 2313 horsepower with five of them operating at 195 horsepower or less, and that although certain pipeline segments may realize pressures up to 500 psig, most of the facilities are operated at pressures of 300 psig or less.

Highlands submits that the subject facilities described in its petition meet the criteria of ''gathering facilities'' under Section 1(b) of the NGA as interpreted by the Commission using the ''primary function'' test, as set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). Highlands asserts that the following facilities, described in more detail in the petition, meet the Commission's standards for gathering: the length and diameter of the pipelines; the El Dorado compressor station considered as the central point in the field where the three pipeline segments converge before discharging gas into Northern's transmission system; the pipelines which transport gas from field gathering systems to the transmission facilities of an interstate pipeline company or to a gas processing plant prior to delivery into such transmission facilities; the size and operating pressure of the facilities; and the amount and use of compression capacity.

Comment date: June 30, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Overthrust Pipeline Company

[Docket No. CP95–545–000]

Take notice that on June 5, 1995, Overthrust Pipeline Company

(Overthrust), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP95–545–000 an application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Commission's Regulations thereunder for permission and approval to abandon natural gas transportation service for Columbia Gas Transportation Corporation (Columbia) and charge and collect from Columbia a negotiated exit fee all as more fully set forth in the application on file with the Commission and open to public inspection.

Overthrust proposes to abandon the firm transportation service provided for Columbia pursuant to a October 8, 1982 transportation agreement (the Agreement) which provided for Overthrust to transport and deliver, for Columbia's account, up to a maximum of 55,000 Mcf per day purchased by Columbia from Chevron USA, Inc.'s Carter Creek and Whitney Canyon fields located in the Overthrust Producing Area of Uinta County, Wyoming. Overthrust indicates that the transportation service was provided pursuant to Overthrust's Rate Schedule T. Overthrust, noting that the contract will expire on January 1, 2003, explains that Columbia informed Overthrust that it implemented restructured services under the Commission's Order No. 636 effective October 1, 1993, and that, as a result of the restructuring, Columbia no longer requires the transportation service under the agreement.

Overthrust further states that on March 3, 1995, Overthrust and Columbia entered into a Stipulation terminating all contractual obligations established under the Agreement through the payment of a negotiated exit fee by Columbia to Overthrust.

Additionally, Overthrust states that it does not propose to abandon any facilities in conjunction with the instant abandonment authorization request nor will there be any abandonment of facilities as a result of the Commission granting the requested abandonment authorization.

Comment date: June 30, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP95–542–000]

Take notice that on June 5, 1995, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed a joint application with the Commission in Docket No. CP95–542–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon an emergency exchange agreement which was authorized in Docket No. CP76–6,[1] all as more fully set forth in the application which is open to the public inspection.

Panhandle and Trunkline, by mutual agreement, propose to abandon their emergency exchange services provided under Panhandle's and Trunkline's respective FERC Rate Schedules E–11 and E–18. Panhandle and Trunkline state that no facilities would be abandoned in this proposal, rather the interconnection of Panhandle's 4-inch diameter lateral and Trunkline's 26-inch diameter mainline in Vermilion County, Illinois, would remain in place and available for open-access transportation service. In the event that future emergency service should become necessary, Panhandle and Trunkline state that it would be performed under Part 284, subpart I of the Commission's Regulations.

Comment date: June 30, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. K N Interstate Gas Transmission Company

[Docket No. CP95–530–000]

Take notice that on May 31, 1995, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–530–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate eight new delivery points located on K N Interstate's main transmission system in Adams, Boone, Dawson, Harlan, Howard, Webster and York Counties, Nebraska and Phillips County, Colorado under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate states that the proposed delivery points will be added under an existing transportation agreement between K N Interstate and K N Energy, Inc. (K N) and will be used by K N to facilitate the delivery of natural gas to new direct retail customers.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

[1] 55 FPC 1041 (1976).

5. Viking Gas Transmission Company

[Docket No. CP95–539–000]

Take notice that on June 2, 1995, Viking Gas Transmission Company (Viking), 1010 Milam Street, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–539–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish an additional delivery point for firm gas transportation services to the City of Randall, Minnesota, under Viking's blanket certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking states that the Cambridge delivery point will be located in Morrison County, Minnesota, on Viking's system and that the total quantities to be delivered to Randall will not exceed contract quantities. Viking indicates that its has sufficient capacity in its system to accomplish the delivery of gas to the proposed delivery point without detriment to any of its other customers.

The City of Randall has agreed to reimburse Viking for the costs of the necessary facilities which consist of a two-inch hot tap, measurement, and data acquisition equipment.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corporation

[Docket No. CP95–548–000]

Take notice that on June 7, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63214, filed in Docket No. CP95–548–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon a lateral line, sales tap and related facilities and equipment which have been used to serve Owens-Illinois, pursuant to MRT's blanket authorization issued in Docket No. CP82–489–000, all as more fully described in the request which is on file with the Commission and open for public inspection. MRT also proposes to abandon service to Owens-Illinois.

MRT proposes to abandon approximately 750 feet of Line A–8, pipeline in Madison, Illinois which was used to serve Owens-Illinois. MRT states that Owens-Illinois has not taken any service from MRT since the early

1980s, and it no longer requires service at this location.

MRT proposes to blind off Line A–8 at the tap valve and remove all the above ground facilities. It is further stated that MRT proposes to abandon in place all the underground pipe.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest 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 Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14741 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5222–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0029.06.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System (NPDES) Modification and Variance Requests. (OMB Control No. 2040–0068; EPA ICR No. 0029.06). This is a request for extension of a currently approved information collection.

Abstract: NPDES permittees must notify EPA or the State regulatory agency of events which may render permit conditions or limitations inappropriate. NPDES permits contain limits on the amount of pollutants that facilities may discharge and impose other conditions on dischargers to comply with Clean Water Act requirements. An applicant for a modification or variance must submit information so that the permitting authority can assess whether the facility is eligible for a variance and whether a deviation from Clean Water Act provisions is necessary.

Burden Statement: The public reporting burden for this collection of information is estimated to total 40,122 hours annually for NPDES permittees, or approximately 5 hours per respondent. The total annual burden projected includes 77,398 hours estimated as burden to State governments delegated NPDES regulatory authority. These estimates include the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: NPDES permittees.

Estimated No. of Respondents: 8,753.

Estimated Total Annual Burden: 117,520 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0029.06 and OMB Control No. 2040–0068 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0029.06, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Mr. Tim Hunt, OMB Control No. 2040–0068, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: June 12, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–14800 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5222–4]

Subcontractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the following subcontractors for access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended. (1) JACA Corporation, 550 Pinetown Road, Fort Washington, Pennsylvania 19034, under Research Triangle Institute's (RTI) contract number 68D40099; and (2)

Mathtech, Incorporated, Suite 111, 202 Carnegie Center, Princeton, New Jersey 08540, under E.H. Pechan and Associates' contract number 68D40107.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than 10 days after issuance of this notice.

FOR FURTHER INFORMATION CONTACT: Doris Maxwell, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5312.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that EPA may provide the above mentioned subcontractors access to these materials on a need-to-know basis. These subcontractors will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in economic impact assessments for Federal air pollution control regulations.

In accordance with 40 CFR 2.301(h), EPA has determined that each subcontractor requires access to CBI, submitted to EPA under sections 112 and 114 of the CAA, in order to perform work satisfactorily under the above noted contracts. The subcontractors' personnel will be given access to information submitted under section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All subcontractor access to CAA CBI will take place at the prime contractors' facility. Each subcontractor will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the subcontractor has access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 1998 under contract 68D40099 and on September 30, 1997 under contract 68D40107.

Dated: June 8, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–14802 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140234; FRL–4958–5]

Access to Confidential Business Information by Chemical Abstracts Services, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Chemical Abstracts Services (CAS), of Columbus, Ohio, for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W5–0015, contractor CAS of 2540 Olentangy River Road, P. O. Box 3012, Columbus, Ohio, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing technical assistance in developing and operating the TSCA Chemical Substance Inventory. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0015, CAS will require access to CBI submitted to EPA under sections 5 and 8 of TSCA to perform successfully the duties specified under the contract. CAS personnel will be given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide CAS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at CAS's site located at 2540 Olentangy River Road, Columbus, Ohio.

In a previous notice published in the **Federal Register** of September 4, 1990 (55 FR 35955), CAS was authorized for access to CBI submitted to EPA under sections 5 and 8 of TSCA. CAS is currently authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual*. EPA has ensured that the facility is in compliance with the manual. Upon completing review of the CBI materials, CAS will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until June 30, 2000.

CAS personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 8, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14803 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4724–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 08, 1995 Through May 12, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–BLM–J65226–WY Rating EC2, Grass Creek Resource Management Plan, Implementation, Big Horn, Washakie, Hot Springs and Park Counties, WY.

SUMMARY: EPA expressed environmental concerns regarding the range of alternatives, cumulative impacts, water quality and ecosystem impacts. EPA requested that additional clarification be provided in the final document on these issues.

ERP No. D–FHW–L40194–WA Rating LO, WA–3/WA–304 Bremerton Ferry Terminal to the vicinity of Gorst Highway Improvement Project, Implementation, Funding, Right-of-Way Grant, NPDES Permit and COE Section 404 Permit, City of Bremerton, Kitsap County, WA.

Summary: EPA used a regional screening process to conduct a limited

review of the draft document. Based upon this limited screen, EPA has not identified any significant issues.

ERP No. D–FRC–L05209–WA Rating LO, Nisqually Hydroelectric Project (FERC. No. 1862) Issuing New License (Relicense), Nisqually River, Pierce, Thurston and Lewis Counties, WA.

Summary: EPA review found no issues of concern that relate to EPA's responsibilities. Therefore EPA had no objection to the action as proposed.

ERP No. D–FTA–C40133–PR Rating EC2, Tren Urbano Transit Project, Improvement, San Juan Metropolitan Area, Funding, NPDES Permit, U.S. Coast Guard Bridge Permit and COE Section 10 and 404 Permits, PR.

Summary: EPA expressed environmental concerns about the proposed project's potential impacts to wetlands, ground water, and historically significant resources. Additionally, EPA requested that further analysis be conducted with regard to air conformity requirements.

ERP No. D–GSA–L40195–WA Rating LO, Pacific Highway Port of Entry (POE) Facility Expansion, Construction of WA–543 in Blaine, near the United States/Canada Border in Blaine, Whatcom County, WA.

Summary: EPA has not identified any significant statutory or jurisdictional issues of concern.

ERP No. D–USA–K11059–CA Rating EC2, Hamilton Army Airfield Disposal and Reuse, Implementation, City of Novato, Marin County, CA.

Summary: EPA expressed environmental concerns that air quality was not adequately considered; that deed restrictions and mitigation measures were not clearly stated; that wetlands and natural resource issues were not explained sufficiently; and that Scenario E (open space) requires further explanation to ensure adequate protection of habitat and specie.

ERP No. DB–COE–E36013–MS Rating EC2, Mississippi River and Tributaries Flood Control Plan, Big Sunflower River Maintenance Project, Yazoo Basin, Sunflower, Washington, Humphreys, Sharkey and Yazoo Counties, MS.

Summary: EPA expressed environmental concerns of potential adverse consequences associated with channelizing over 100 miles of streams in the Big Sunflower watershed. EPA requested additional information before a decision is made on the project's feasibility.

Final EISs

ERP No. F–FHW–C40100–NY I–26 Mohawk River Crossing connecting NYS Thruway Interchange 26, I–890, NYS–5S and NYS–5 Construction, Funding, U.S. Coast Guard Permits and COE Section 404 Permit, Towns of Rotterdam and Glenville, Schenectady County, NY.

Summary: EPA believed that the implementation of the proposed project will not have an adverse effect on the environment; and therefore, does not object to its implementation.

Other

ERP No. LD–AFS–L61200–ID Rating LO, North Fork of the Clearwater River Drainage, Kelly Creek and Cayuse Creek, Wild and Scenic River Study, Suitability or Nonsuitability for Designation or Nondesignation in the National Wild and Scenic River System, Clearwater National Forest, Clearwater and Idaho Counties, ID.

Summary: EPA regional screening process identified no significant statutory or jurisdictional issues of concern, thus EPA had no objection to the action.

Dated: June 13, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–14821 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4723–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 5, 1995 Through June 9, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950240, Final EIS, HUD, UT, Guadalupe Neighborhood Project, Demolition, Rehabilitation, Construction and Development, Funding, Salt Lake City, Salt Lake City County, UT, Due: July 17, 1995, Contact: Craig A. Hinckley (801) 535–7902.

EIS No. 950241, Draft EIS, AFS, CO, UT, Steamboat Ski Area Expansion, Implementation, Medicine Bow-Routt National Forest, Mt. Weiner, Special-Use-Permit and COE Section 404 Permit, Routt County, CO, Due: July 31, 1995, Contact: Wendy Schmidt (970) 879–1722.

EIS No. 950242, Draft EIS, COE, CA, Port of Long Beach (POLB) Main Channel Deepening and Navigation Improvements, Implementation, Queen's Gate, San Pedro Bay, Los Angeles County, CA, Due: July 31, 1995, Contact: Russell L. Kaiser (213) 894–0247.

EIS No. 950243, Final EIS, FHW, PA, US 219 Transportation Project, Improvement from I–68 to Somerset and US 219 to Meyersdale, Funding, Somerset County, PA, Due: July 17, 1995, Contact: Manual A. Marks (717) 782–3461.

EIS No. 950244, Final EIS, AFS, ID, Salmon Wild and Scenic River Corridor Implementation, Issuance of Special-Use-Permits for three Private Camps, Salmon National Forest, Salmon County, ID, Due: July 24, 1995, Contact: Steve Haydon (208) 865–2383.

EIS No. 950245, Draft EIS, NPS, CA, Cabrillo National Monument, General Management Plan/Development Concept Plans, Implementation, San Diego County, CA, Due: August 18, 1995, Contact: Meredith Kaplan (415) 744–3968.

EIS No. 950246, Final Supplement, COE, KS, Arkansas and Walnut Rivers Flood Control Plan, Updated Information, Implementation, Arkansas City, Cowley County, KS, Due: July 17, 1995, Contact: J. Paul Mace (918) 669–7188.

EIS No. 950247, Draft EIS, FHW, OR, Mount Hood Corridor Study, US 26 Rhododendron to OR–35 Junction, Improvements, Funding, Clackamas County, OR, Due: August 17, 1995, Contact: Jef Kaiser (503) 986–3477.

EIS No. 950248, Draft EIS, AFS, WA, UT, Dixie National Forest Oil and Gas Leasing on Federal Lands and Non-Federal lands, Implementation, Garfield, Kane and Iron Counties, WA and Piute and Wayne Counties, UT, Due: August 29, 1995, Contact: John Shochat (801) 865–3700.

EIS No. 950249, Final EIS, COE, CA, Humboldt Harbor and Bay (Deepening) Channels, Feasibility Study for Navigation Improvements, Humboldt County, CA, Due: July 17, 1995, Contact: Tamara Terry (415) 744–3341.

EIS No. 950250, Final EIS, FHW, PA, I–81 Interchange Project, Construction, Funding and COE Section 404 Permit, Borough of Chambersburg, Franklin County, PA, Due: July 17, 1995, Contact: Manual Marks (717) 782–3461.

EIS No. 950251, Draft Supplement, NPS, AK, Brooks River Area, Katmai National Park and Preserve Development Concept Plan, Updated Information concerning a New Proposal Alternative for Beaver Pond Terrace, Implementation, AK, Due: August 14, 1995, Contact: Clifford Hawkes (303) 969–2262.

EIS No. 950252, Draft Supplement, NAS, Programmatic EIS—Sounding Rocket Program (SRP), Updated Information concerning Programmatic Changes since the 1973 FEIS, Site-

Specific to Wallops Flight Facility (WFF), Wallops Island, VA; Poker Flat Research Range (PFRR), Fairbanks, AK and White Sands Missile Range (WSMR), White Sands, NM and on a Global Scale, Due: July 31, 1995, Contact: Kenneth M. Kumor (202) 358–1112.

EIS No. 950253, Draft EIS, NOA, Atlantic Coast Weakfish Fishery, Fishery Management Plan, Implementation, Weakfish Harvest Control in the Atlantic Ocean Exclusive Economic Zone (EEZ), off the New England, Mid-Atlantic and South Atlantic Coast, Due: July 31, 1995, Contact: William Hogarth (301) 713–2339.

EIS No. 950254, Draft EIS, NCP, DC, Washington, D.C. New Sports and Entertainment Arena, Construction and Operation, Modern Multi-Purpose Arena, Eight potential Sites, Washington, D.C., Due: July 31, 1995, Contact: Maurice Foushee (202) 724–0174.

Amended Notices

EIS No. 950195, Draft EIS, AFS, MT, Beaver Woods Vegetation Management Project, Implementation, Bitter National Forest, West Fork Ranger District, Ravalli County, MT, Due: July 18, 1995, Contact: Nora Rasure (406) 821–3269. Published FR—05–19–95 Due Date Correction.

Dated: June 13, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–14822 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5222–7]

The Territory of the U.S. Virgin Islands; Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of the territory of the U.S. Virgin Islands for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency has approved and will continue to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that approvals of state programs have an important benefit. Approved State/Tribe permit programs provide for interaction between State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent that the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The U.S. Virgin Islands applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed the U.S. Virgin Islands' MSWLF application and certain revisions thereto, and has made a tentative determination that all portions of the U.S. Virgin Islands' MSWLF permit program, including certain regulatory changes, are adequate to assure compliance with the revised Federal Criteria. These changes include a commitment by the Territory that existing solid waste regulations will be amended to conform to part 258 requirements, and that the two existing publicly owned landfills will be operated in accordance with part 258 requirements, pending adoption of the amended regulations. The U.S. Virgin Islands' application for program adequacy determination and its revisions are available for public review and comment.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region has scheduled two public hearings on this tentative determination. Details appear below in the **DATES** section.

DATES: All comments on the U.S. Virgin Islands' application for a determination of adequacy must be received by the close of business on August 11, 1995. One public hearing will be held on St. Croix on August 1, 1995 and a second hearing will take place on St. Thomas, on August 2, 1995. Both hearings will begin at 6:00 p.m. The U.S. Virgin Islands will participate in the public hearings held by EPA on this subject.

ADDRESSES: Copies of the U.S. Virgin Islands' application for adequacy are available between 8:30 a.m. and 5:00 p.m. at the following three addresses for inspection and copying: U.S. EPA Region II Library, 290 Broadway, 16th Floor, New York, New York, 10007–1866, telephone (212) 637–3185; Department of Planning and Natural Resources, Division of Environmental Protection, Nisky Shopping Center, Suite 231, St. Thomas, Virgin Islands 00802, telephone (809) 774–3320; Department of Planning and Natural Resources, Division of Environmental Protection, Water Gut Homes—1118, Christiansted, St. Croix, Virgin Islands 00820–5065, telephone (809) 773–8565. Written comments should be sent to Carl-Axel P. Soderberg, Director, USEPA-Region II, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, STOP 22, Santurce, PR 00909. The public hearing on August 1, 1995 will be held at the Department of Planning and Natural Resources, Commissioner's Conference Room, 6003 Anna's Hope, St. Croix, Virgin Islands. The public hearing on August 2, 1995, will be held at the Department of Planning and Natural Resources, CZM Lower Level Conference Room, 8000 Nisky Shopping Center, St. Thomas, Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Stanley Siegel, Chief, Hazardous and Solid Waste Programs Branch, U.S. EPA Region II, 290 Broadway, New York, New York, 10007–1866, telephone (212) 637–4100.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in

section 4005 that EPA determine that State municipal solid waste landfill permit programs are adequate to comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA has approved and will continue to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice or prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program. EPA Regions will determine whether a State/Tribe has submitted an ''Adequate'' program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirement for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Territory of the U.S. Virgin Islands

On October 6, 1993, the Territory of the U.S. Virgin Islands submitted an application for adequacy determination. Subsequently, the U.S. Virgin Islands made several revised submissions. EPA has reviewed the application and the revised submissions, and has tentatively determined that all portions of the U.S. Virgin Islands' Subtitle D program are adequate to provide compliance with the revised Federal Criteria.

Currently there are two municipal solid waste disposal facilities operating in the U.S. Virgin Islands. One facility is located on St. Thomas and the other on St. Croix. An additional facility, located on St. John, stopped receiving waste between October 9, 1991 and October 9, 1993. The island of St. John is currently serviced by a transfer station from which the waste is transported to the St. Thomas landfill for disposal.

The U.S. Virgin Islands Department of Planning and Natural Resources has responsibility for implementing and enforcing solid waste management regulations, including a permit program, inspection authority and enforcement activities. The solid waste landfills presently located in the Territory are owned by the Government of the U.S. Virgin Islands and operated by the U.S. Virgin Islands Department of Public Works. Although the Territory does not presently have regulations that conform to the Federal solid waste disposal facility criteria, the Departments of Planning and Natural Resources and Public Works have entered into a Memorandum of Agreement dated January 11, 1995 which commits the two agencies to meeting the requirements of 40 CFR part 258 when operating or issuing a permit to a solid waste facility. This Memorandum of Agreement was submitted to the EPA in conjunction with the application for adequacy determination. In addition, the Commissioner of the Department of Planning and Natural Resources submitted a letter to the EPA dated March 22, 1994 in which he committed his agency to adopting amended regulations that incorporate the requirements of 40 CFR part 258 and clear up any existing inconsistencies between 40 CFR part 258 and Title 19 Chapter 56 of the Virgin Islands Code by May 1, 1996. While the Department of Planning and Natural Resources had expected the revised regulations to be enacted by May, 1995, it now expects that the revised regulations will be adopted by May, 1996. The Commissioner's letter also states that no permits will be issued for the establishment of any private solid waste disposal facility until new regulations for solid waste landfill management are approved by the EPA. In addition, the Department has committed to issuing a permit to the Department of Public Works pursuant to the revised regulations once these regulations are adopted. EPA has reviewed these items as well as the other contents of the U.S. Virgin Islands' application and has made a preliminary determination that their provisions are adequate to meet Part 258 criteria.

The EPA will hold two public hearings on its tentative decision. One hearing will be held on August 1, 1995 at the Department of Planning and Natural Resources' Commissioner's Conference Room on St. Croix. An additional hearing will be held on August 2, 1995 at the Department of Planning and Natural Resources' CZM Lower Level Conference Room on St. Thomas. On each of these dates, the hearings will begin at 6:00 p.m. Comments can be submitted orally at the hearings or in writing at the time of the hearings. The public may also submit written comments on EPA's tentative determination to the location indicated in the **ADDRESSES** section of this notice until August 11, 1995. Copies of the U.S. Virgin Islands' application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and during each public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for the U.S. Virgin Islands' program. EPA expects to make a final decision on whether or not to approve the U.S. Virgin Islands' program by September 18, 1995 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and responses to all major comments. Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA will be considered to be in compliance with Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirement of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: May 4, 1995.

Herbert Barrack,

Acting Regional Administrator.

[FR Doc. 95–14825 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel: Renewal of Charter

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consultation to the Clearinghouse with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Janet McKee, National Clearinghouse on Election Administration, Washington, DC 20463, 202/219–3670.

Dated: June 13, 1995.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 95–14792 Filed 6–15–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

United Community Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with White County Bancshares, Inc., Cleveland, Georgia, and thereby indirectly acquire White County Bank, Cleveland, Georgia.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Neighborhood Bancorp, San Diego, California; to become a bank holding company by acquiring 50.1 percent of the voting shares of Neighborhood Development Bank, National Association (in organization), San Diego, California.

Board of Governors of the Federal Reserve System, June 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14777 Filed 6–15–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a. as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05–22–95 AND 06–02–95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Dresser Industries, Inc., Grove, S.p.A., Grove, S.p.A	95–1511	05/22/95
The Seagram Company Ltd. (a Canadian company), Brain Fargo, Interplay Productions, Inc	95–1552	05/22/95
Columbia/HCA Healthcare Corporation, Goodlark Regional Medical Center, Inc., Central Tennessee Hospital Corporation	95–1555	05/22/95
Richard R. Rogers, Nu-Kote Holding, Inc., Nu-Kote Holding, Inc.	95–1585	05/22/95
International Business Machines, General Electric Company, General Electric Capital Computer Leasing Corporation	95–1611	05/22/95
Monsanto Company, L. Peter Frieder, Jr., Optical Diamond Products	95–1614	05/22/95
Adaptec, Inc., Jack A. and Patricia A. Allweiss, Future Domain Corporation	95–1617	05/22/95
E.I. DuPont De Nemours and Company, Enron Corporation, Enron Oil & Gas Company	95–1619	05/22/95
Renfro Corporation, Maurice Bidermann, Great American Knitting Mills, Inc	95–1620	05/22/95
Arjo Wiggins Appleton p.l.c., Stora Kopparbergs Bergslags AB, Stora Papyrus Newton Falls, Inc	95–1621	05/22/95
Air Express International Corporation, Radix Ventures, Inc., Radix Ventures, Inc	95–1623	05/22/95
First Chicago Corporation, Seco Products Corporation, Seco Products Corporation	95–1624	05/22/95
United Mine Workers of America 1974 Pension Trust, AT&T Corp., AT&T Corp	95–1627	05/22/95
M. Francois Pinault, Theodore Ammon, BFP Holdings Corp	95–1628	05/22/95
Adventist Health System Sunbelt Healthcare Corporation, Metroplex Health Care Corporation, Metroplex Health Care Corporation	95–1629	05/22/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05–22–95 AND 06–02–95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
H.F. Johnson Distributing Trust of Samuel C. Johnson, Whitmire Research Laboratories, Inc. ESOP, Whitmire Research Laboratories, Inc	95–1633	05/22/95
Suiza Foods Corporation, John Labatt Limited, Lehigh Valley Dairies, Inc	95–1634	05/22/95
Illinois Tool Works Inc., Stephen G. Dent, Fibre Glass-Evercoat Company, Inc	95–1635	05/22/95
N.V. Verenigd Bezit VNU, K–III Communications Corporation, Lakewood Publications Inc	95–1639	05/22/95
Benson Eyecare Corporation, Fuji Bank Limited, DBL Management, Inc	95–1640	05/22/95
Applause Enterprises Inc., Dakin, Inc., Dakin, Inc	95–1643	05/22/95
Kenneth R. Thomson, R.L. Polk & Co., R.L. Polk & Co	95–1656	05/22/95
Danaher Corporation, Marc Guindon, Total Containment, Inc	95–1657	05/22/95
Life Re Corporation, Deere & Company, John Deere Life Insurance Company	95–1659	05/22/95
CIS Technologies, Inc., First Financial Management Corporation, Hospital Cost Consultants, Inc	95–1662	05/22/95
The Fuji Bank, Limited, NuVision, Inc., NuVision, Inc	95–1665	05/22/95
MobileMedia Corporation, Dial Page, Inc., Dial Page Southeast, Inc./Radio Call Company of VA, Inc	95–1669	05/22/95
Apollo Investment Fund III, L.P., FFL Partners, Food 4 Less Holdings, Inc	95–1678	05/22/95
Donnkenny, Inc., Beldoch Industries Corporation, Beldoch Industries Corporation	95–1684	05/22/95
Wembley, Ltd. (a British Virgin Island company), Gundle Environmental Systems, Inc., Gundle Environmental Systems, Inc	95–1431	05/23/95
Gundle Environmental Systems, Inc., Wembley, Ltd. (a British Virgin Island company), SLT Environmental, Inc	95–1432	05/23/95
Microsoft Corporation, Wang Laboratories, Inc., Wang Laboratories, Inc	95–1549	05/23/95
Watson Pharmaceuticals, Inc., Circa Pharmaceuticals, Inc., Circa Pharmaceuticals, Inc	95–1599	05/23/95
Douglas & Lomason Company, Bestop, Inc., Bestop, Inc	95–1636	05/23/95
CIGNA Corporation, Tokyo Masuiwaya Co. Ltd., Tokyo Masuiwaya California Corporation	95–1637	05/23/95
Sanifill, Inc., James F. Cozzetto, Metropolitan Disposal and Recycling Corporation	95–1638	05/23/95
General Signal Corporation, Best Power Technology, Incorporated, Best Power Technology, Incorporated	95–1645	05/23/95
AB Volvo, Prevost Car Inc., Prevost Car Inc	95–1646	05/23/95
Tele-Communications, Inc., James C. Calano, CareerTrack, Inc., and assets of DDP Realty Company	95–1672	05/23/95
Quantum Fund N.V., First Reserve Secured Energy Assets Fund, L.P., First Reserve Gas Company	95–1679	05/23/95
Quantum N.V., First Reserve Fund V, Limited Partnership, First Reserve Gas Company	95–1680	05/23/95
Ingersoll-Rand Company, Clark Equipment Company, Clark Equipment Company	95–1388	05/24/95
ARAMARK Corporation, Eugene and Elaine Meader, Meader Distributing Co., Inc	95–1651	05/24/95
Image Industries, Inc., Stowe-Pharr Mills, Inc., Pharr Yarns of Georgia, Inc	95–1658	05/24/95
Protective Life Corporation, State Mutual Life Assurance Company of America, SMA Life Assurance Company	95–1512	05/25/95
AGE Institute, Genesis Health Ventures, Inc., Genesis Assets	95–1632	05/25/95
W. Don Cornwell, Queen City III Limited Partnership, Queen City III Limited Partnership	95–1664	05/25/95
K/B Opportunity Fund II, L.P., American Express Company, Chino Shopping Center Associates Ltd. Partnership Assets	95–1676	05/25/95
Columbia/HCA Healthcare Corporation, LaGrange Memorial Health System, Inc., LaGrange Memorial Hospital	95–1582	05/26/95
Paging Network, Inc., Page American Group, Inc., Page America Communications of California	95–1489	05/30/95
Thyssen Aktiengesellschaft, Figgie International Inc., Safeway Steel Products, Inc	95–1577	05/30/95
Plettac AG (a German company), Figgie International, Inc., Safeway Steel Products, Inc	95–1578	05/30/95
Frontier Corporation, ALC Communications Corporation, ALC Communications Corporation	95–1681	05/30/95
Marvin J. Herb, Arthur J. Canfield, Jr., The Canfield Assets	95–1683	05/30/95
A&D Limited Partnership, Westinghouse Electric Corporation, WCI Communities, Inc	95–1685	05/30/95
Amoco Corporation, Kuwait Petroleum Corporation, Santa Fe Minerals Inc. and SFM Holdings, Inc	95–1687	05/30/95
Quorum Health Group, Inc., The Lutheran Hospital of Indiana, Inc., The Lutheran Hospital of Indiana, Inc	95–1693	05/30/95
Connecticut Health System, Inc., VNA Health Care, Inc., VNA Health Care, Inc	95–1694	05/30/95
R.R. Donnelley & Sons Company, LANSystems, Inc., LANSystems, Inc	95–1695	05/30/95
Kinross Gold Corporation, Peter Kiewit Sons', Inc., Kiewit Rawhide Corp	95–1699	05/30/95
Harvard Industries, Inc., Doehler-Jarvis, Inc., Doehler-Jarvis, Inc	95–1707	05/30/95
Blue Cross and Blue Shield of Missouri, HealthLink, Inc., HealthLink, Inc	95–1708	05/30/95
AT&T Corp., Cellular Communications, Inc., CCI RSA, Inc	95–1710	05/30/95
Tractebel S.A., CRSS Inc., CRSS Inc	95–1712	05/30/95
K/B Opportunity Fund II, L.P., Oak Plaza Partners, L.P., Hak Partners—San Fernando, Ltd	95–1724	05/30/95
Don Tyson, International Multifoods Corporation, JAC Creative Foods, Inc. and Multifoods Seafood, Inc	95–1731	05/30/95
River City Broadcasting, L.P., Kerby E. Confer, Keymarket of New Orleans, Inc	95–1735	05/30/95
Columbia/HCA Healthcare Corporation, Good Samaritan Hospital d/b/a Good Samaritan Corp., Good Samaritan Hospital d/b/a Good Samaritan Corp	95–1563	05/31/95
Welsh, Carson, Anderson & Stowe VI, LP, Liberty Brokerage Investment Corp., MVIS Corporation and Securities Information Corp	95–1421	06/01/95
Atlanta Gas Light Company, Sonat Marketing Company (Joint Venture), Sonat Marketing Company (Joint Venture)	95–1587	06/01/95
Sonat Inc., Sonat Marketing Company (Joint Venture), Sonat Marketing Company (Joint Venture)	95–1589	06/01/95
Imasco Limited (a Canadian company), Stephen B. Ashley, Sibley Mortgage Corporation	95–1594	06/01/95
General Electric Company, Charles Schusterman, Total Compression Incorporated	95–1610	06/01/95
Charterhouse Equity Partners II, L.P., Envirite Corporation, County Environmental Services, Inc. & Envirite Assets	95–1615	06/01/95
BankAmerica Corporation, Limited Liability Company, Limited Liability Company	95–1666	06/01/95
NationsBank Corporation, Limited Liability Company, Limited Liability Company	95–1667	06/01/95
North Shore Regional Health System, Franklin Hospital Medical Center, Franklin Hospital Medical Center	95–1668	06/01/95
BankAmerica Corporation, H&R Block, Inc., MECA Software, Inc	95–1670	06/01/95
NationsBank Corporation, H&R Block, Inc., MECA Software, Inc	95–1671	06/01/95
Wendy's International, Inc., Carolyn Mary Hamra, Executrix of Estate of Gerald Hamra, Wendy's Old Fashioned Hamburgers of Little Rock, Inc	95–1688	06/01/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05–22–95 AND 06–02–95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cablevision Systems Corporation, General Electric Company, SportsChannel Associates and Rainbow News 12 Company	95–1709	06/01/95
Jordan Industries, Inc., Albert Schmier, Duro-Med Industries, Inc	95–1718	06/01/95
Aon Corporation, Mark Kottler, Berkely-Arm, Inc	95–1721	06/01/95
Orion Capital Corporation, Sun Alliance Group plc, Wm. H. McGee & Co., Inc	95–1722	06/01/95
Jordan Industries, Inc., Donald Mann, Duro-Med Industries, Inc	95–1728	06/01/95
Robert F.X. Sillerman, Jeffrey E. Trumper, Trumper Communications of North Carolina, L.P	95–1736	06/01/95
Leucadia National Corporation, MK Gold Company, MK Gold Company	95–1745	06/01/95
M. Holder, E.I. du Pont de Nemours and Company, The Conoco Assets	95–1748	06/01/95
Imperial Chemical Industries PLC, The O'Brien Corporation, The O'Brien Corporation	95–1562	06/02/95
John L. Macdonald, Robert S. Zalkowitz, BTL Specialty Resins Corp	95–1581	06/02/95
Koch Industries, Inc., Kerr McGee Corporation, Southwestern Refining Company, Inc	95–1616	06/02/95
Telephone and Data Systems, Inc. Voting Trust, Century Communications Corp., Century Communications Corp	95–1690	06/02/95
General Signal Corporation, Data Switch Corporation, Data Switch Corporation	95–1702	06/02/95
Burlington Northern Inc., Santa Fe Pacific Corporation, Santa Fe Pacific Pipeline Holdings, Inc	95–1730	06/02/95
Wexford Capital Partners II, L.P., San Diego Gas & Electric Company, Wahlco Environmental Systems, Inc	95–1749	06/02/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contract Representatives Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–14721 Filed 6–15–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of GSA Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection entitled ''Application To Use Federal Supply Schedules By State, Local and Indian Tribal Governments.'' The application will be used by states, departments or agencies of a state, and any political subdivision of a state, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian Tribe, to request authorization from GSA to use the Federal supply schedules.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets NW., Washington, DC, 20405.

ANNUAL REPORTING BURDEN: Respondents: 10,000. Annual Responses: 10,000. Average time per response: fifteen minutes. Burden hours: 2,500.

FOR FURTHER INFORMATION CONTACT: Les Davison, (202) 501–4768.

Copy of proposed application may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Streets, NW., Washington, DC 20405, or by telephoning (202) 501–2691, or by fax request to (202) 501–2727.

Dated: June 13, 1995.

Kenneth S. Stacey,

Director, Information Management Division.

[FR Doc. 95–14790 Filed 6–15–95; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 532]

Cooperative Agreements for a National System of Integrated Activities to Prevent HIV Infection and Other Serious Health Problems Among Students, Especially Postsecondary Students

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements to establish a national system of integrated activities for preventing HIV infection and other serious health problems among the nation's students, especially postsecondary students and those in high-risk situations.

Applicants may apply for funding to carry out activities in one or more of the following priority areas:

Priority One—Educate Policy and Decision-Makers

To educate and encourage policy and decision-making members of postsecondary institutions to support programs to prevent HIV infection among students, especially postsecondary students and those in high-risk situations.

Priority Two—Support Institution-Wide Health Promotion Programs

To build the capacity of postsecondary institutions to implement comprehensive integrated strategies designed to prevent HIV infection as part of institution-wide health promotion and disease prevention programs for postsecondary students, especially those in high-risk situations.

Priority Three—Support Preservice Education

To provide technical assistance and training to personnel in postsecondary institutions about the skills that health, education, social service, and other professionals need in order to help young people, including students in grades K–12 and those in high-risk situations, avoid HIV infection and other serious health problems.

The Public Health Service (PHS) is committed to implementing the recommendations outlined in the *External Review of HIV Prevention Strategies,* and the health promotion and disease prevention objectives of *Healthy People 2000,* a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This program announcement is related to the priority areas of HIV

Infection (Objective 18.11, ''Provide HIV education for students and staff in at least 90 percent of colleges and universities''), and Educational and Community-Based Programs (Objective 8.4, ''Increase to at least 75 percent the proportion of the Nation's elementary and secondary schools that provide planned and sequential kindergarten through 12th grade quality school health education''; Objective 8.5, ''Increase to at least 50 percent the proportion of postsecondary institutions with institution-wide health promotion programs for students, faculty, and staff''; and Objective 8.6, ''Increase to at least 85 percent the proportion of workplaces with 50 or more employees that offer health promotion activities for their employees, preferably as part of a comprehensive employee health promotion program''). The most recent description of CDC efforts to prevent HIV infection is included in *Public Health Reports,* including CDC efforts to prevent HIV infection among youth. (To order a copy of the *External Review of HIV Prevention Strategies, Healthy People 2000, and Public Health Reports,* see the section on **REFERENCE MATERIALS**).

Authority

This program is authorized under sections 311(c) [42 U.S.C. 243(c)], and 317(k)(2) [42 U.S.C. 247(k)(2)] of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR Part 51b.

Eligible Applicants

Eligible applicants are national education, health, or social service organizations that are private, nonprofit, professional, or voluntary. Eligible applicants must have postsecondary institutions or programs as their major focus; and applicants must have the organizational capacity to help develop an ongoing national system of integrated activities to prevent HIV infection and other serious health problems among students, especially postsecondary students and those in high-risk situations. Eligible applicants must have affiliate offices, organizations, or constituencies in a minimum of 10 States and territories.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $2.5 million is available in FY 1995 to fund approximately 10 awards. It is expected that the average award will be $250,000, ranging from $200,000 to $300,000. It is expected that awards will begin on or about September 25, 1995, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards for new budget periods will be based on satisfactory performance, receipt of an acceptable continuation application, and the availability of funds.

Funds must be used for categorical activities to prevent HIV infection among youth. Activities can also be included that support the integration of HIV activities as part of broader programs to improve the health of youth (e.g., related STD and pregnancy prevention programs; related alcohol and other drug prevention programs; related institution wide health promotion programs for students, faculty, and staff). These funds may not be used to conduct research.

Purpose

The purpose of this program is to support national organizations and other relevant agencies in establishing an ongoing national system of integrated activities to prevent HIV infection and other serious health problems among students, especially postsecondary students and those in high-risk situations.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Collaborate with constituents; other national organizations whose foci are postsecondary institutions; community planning; State and local education and health agencies; and CDC to develop a national system to achieve the purpose of this program announcement.

2. Establish feasible goals and specific, measurable, and realistic objectives.

3. Establish an operational plan that could include, but is not limited to:

(a) Including as a priority within the organization, health promotion and disease prevention programs to reduce HIV risk behaviors of students, especially postsecondary students and those in high-risk situations.

(b) Developing and promoting the implementation of State and local policies designed to reduce the HIV risk behaviors of students, especially postsecondary students and those in high-risk situations.

(c) Developing and promoting the implementation of activities designed to prevent HIV risk behaviors among students, especially postsecondary students and those in high-risk situations.

(d) Educating and encouraging policy and decision-making members of national organizations and their constituents, to support HIV prevention education programs for students, especially postsecondary students and those in high-risk situations.

4. Evaluate the project's effectiveness in achieving goals and objectives.

5. Disseminate programmatic information to CDC and other interested recipients through appropriate methods that include:

(a) Identifying and submitting pertinent programmatic information for incorporation into a computerized database of health information and health promotion resources, such as the Combined Health Information Database (CHID).

(b) Sharing information through electronic bulletin boards, such as the Comprehensive Health Education Network (CHEN).

6. Participate with CDC and other appropriate agencies in planning and convening meetings. The budget request should include the cost of a five-day trip to Atlanta for two individuals to attend a CDC annual conference and a two-day trip to Atlanta for two individuals to attend an additional meeting.

B. CDC Activities

1. Provide and periodically update information related to the purposes or activities of this program announcement.

2. Collaborate with national, State, and local education and health agencies and other relevant organizations in planning and conducting national strategies designed to strengthen programs for preventing HIV infection and other serious health problems among young persons.

3. Provide substantial programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

4. Plan meetings of national, State, and local education agencies and other appropriate agencies to address issues and program activities related to improving the health of postsecondary students; and strengthening the capacity of education, health, and other relevant agencies to prevent HIV infection and other serious health problems among young persons, especially those in high-risk situations.

5. Assist in the evaluation of program activities.

6. Monitor the recipient's performance of program activities and make recommendations to facilitate future progress.

Review and Evaluation Criteria

Each application will be allocated a total of 100 points, and will be reviewed and evaluated according to the following criteria:

A. *Background/Need* (10 points).

The extent to which the applicant justifies the need for the activities including:

1. Identifying target populations;

2. Identifying the barriers in reaching the target population;

3. Identifying what might move HIV prevention efforts forward within the target population.

B. *Capacity and Impact* (30 points).

The extent to which the applicant demonstrates the capacity and ability to:

1. Develop and conduct the proposed activities;

2. Involve postsecondary institutions or programs;

3. Institutionalize activities that can reduce HIV infection among students, especially postsecondary students and those students who may be in high-risk situations.

C. *Goals and Objectives* (10 points).

1. Goals. The extent to which the applicant has submitted realistic goals for the projected five-year project period.

2. Objectives. The extent to which the applicant has submitted specific, measurable, and feasible objectives for the one-year budget period that directly relate to the applicant's goals.

D. *Operational Plan* (15 points).

1. The extent to which proposed activities:

(a) Involve postsecondary institutions.

(b) Are likely to reduce HIV infection and related health problems among students especially postsecondary students and those in high-risk situations.

(c) Achieve the stated objectives within the first budget period.

2. The extent to which the applicant includes a reasonable timeline for conducting proposed activities.

3. The extent to which the applicant provides a description of the activities anticipated for years 2, 3, 4, and 5 of the project.

E. *Project Management and Staffing* (15 points).

The extent to which the applicant identifies staff and other agencies that have the responsibility and authority to carry out each activity, including:

1. Organizational charts demonstrating that the staff have the authority needed to carry out those responsibilities.

2. Job descriptions and curricula vitae demonstrating that the staff have backgrounds that qualify them to fulfill the proposed responsibilities.

3. Commitment of at least one full-time staff member to provide direction for the proposed activities.

4. Letters from collaborating organizations indicating their intent and capacity to carry out their designated responsibilities.

F. *Sharing Experiences and Resources* (5 points).

The extent to which the applicant indicates how it will share effective materials and activities.

G. *Collaborating* (5 points).

The extent to which the applicant describes how it will collaborate with CDC and with other relevant agencies.

H. *Evaluation* (10 points). The extent to which the applicant:

1. Identifies how it will monitor progress in meeting objectives.

2. Identifies how program effectiveness will be measured and presents a reasonable plan for obtaining data, reporting results, and using the results for programmatic decisions.

I. *Budget and Accompanying Justification* (not scored). The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives and planned activities of the project.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health Systems Reporting Requirements

This program is not subject to the Public Health Systems Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.938.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

HIV/AIDS Requirements

Recipients must comply with the document entitled: ''Interim Revision of Requirements of the Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs'' (June 15, 1992), a copy of which is included in the application kit. The names and affiliations of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. In progress reports, the recipient must submit the program review panel's report indicating all materials have been reviewed and approved.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 (OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Acting Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, Attention: Marsha D. Driggans, Mailstop E16, on or before July 24, 1995. *Facsimile copies will not be accepted.*

1. *Deadline.* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial mail carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.

2. *Late Applications.* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6523, facsimile (404) 842–6513, or via INTERNET: mdd2@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Elizabeth Majestic, Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K31, Atlanta, GA 30341–3724, telephone (404) 488–5356.

Please refer to Announcement 532 when requesting information or submitting an application.

Reference Materials

(1) Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0), Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1), and Adolescent Health (Volume 1, Stock No. 052–00301234–1; Volume 2, Stock No. 052–003–01235–9; Volume 3, Stock No. 052–003–01236–7) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

(2) Potential applicants may obtain a copy of the External Review of HIV Prevention Strategies, from the Centers for Disease Control and Prevention (CDC), National Center for Prevention Services, Division of HIV/AIDS Prevention, 1600 Clifton Rd., Mailstop D21, Atlanta, GA 30333, telephone (404) 639–0900.

(3) Potential applicants may obtain a copy of Public Health Reports, Volume 106, Number 6, from the National AIDS Information Clearinghouse, P.O. Box 6003, Rockville, MD 20850, telephone (800) 458–5231.

(4) Potential applicants can obtain additional information about HIV Prevention Community Planning Groups, by contacting Gary West, Division of HIV/AIDS Prevention, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., Mailstop D21, Atlanta, GA 30333, telephone (404) 639–0900.

(5) Potential applicants may obtain a copy of The Second Annual National School Health Conference Proceedings, from the National Center for Chronic Disease Prevention and Health Promotion, Division of Adolescent and School Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., Mailstop K31, Atlanta, GA 30333, telephone (404) 488–5324.

Special Guidelines for Technical Assistance Workshop

A one-day technical assistance workshop will be held in Washington, DC, approximately two weeks after the publication date of the Program Announcement in the **Federal Register**. The purpose of this meeting is to help potential applicants to:

1. Understand the scope and intent of Announcement 532; and
2. Understand the Public Health Service grants policies, applications, and review procedures.

Attendance at this workshop is not mandatory. Applicants who are currently funded by CDC may not use project funds to attend this workshop. However, attendees who compete successfully may be reimbursed for their allowable and reasonable expenses through their new award.

Each potential applicant may send no more than two representatives to this meeting. Please provide the names of the persons that are planning to attend this meeting to Elizabeth Majestic, Chief, Special Populations Section, Division of Adolescent and School Health, telephone (404) 488–5356, within 10 working days after the publication date of the program announcement in the **Federal Register**.

Dated: June 12, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14773 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 572]

National Institute for Occupational Safety and Health; Prevention of Stress and Health Consequences of Workplace Downsizing and Reorganization

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program to study organizational downsizing/reorganization and propose interventions to reduce the negative health and performance consequences among employees. The research funded by this cooperative agreement will focus on the defense nuclear industry where large-scale downsizing and reorganization are currently occurring, but the research will provide a model for other industries affected by downsizing and reorganization issues.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Mental Health and Mental Disorders. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

Authority

This program is authorized under Sections 20 (a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 671(e)(7)).

Smoke-free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro- Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-, and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $300,000 is available in FY 1995 to fund at least one award. It is expected that the award will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to utilize the special resources of the extramural community to conduct a program of applied

research in the prevention of negative health consequences of organizational downsizing/reorganization in selected facilities of the defense nuclear and related industries. The program will consist of applied research to assess the effects of downsizing on employee health and well-being, and on organizational culture/climate. Specifically, this cooperative agreement is intended to result in the development, implementation, and evaluation of practical interventions for preventing the negative health and performance consequences of downsizing. Primary prevention strategies should be emphasized (e.g., recommending ''best practices'' for downsizing), but secondary prevention strategies, if linked to a primary prevention strategy, can be proposed (e.g., provision of counseling for employees).

At least three key aspects of downsizing/reorganization should be assessed in any research proposal: (1) The purpose of downsizing (proactive vs. reactive); (2) the process of downsizing (targeted vs. across-the-board changes, communication style etc.); and (3) the provision of assistance to employees who lose their jobs (finding new jobs or acquiring new skills), and employees who retain their jobs. Outcome measures can include measures of perceived stress, health consequences to downsizing of those employees who retain their jobs, employee commitment and involvement and organizational culture/climate. The findings should be used to develop preventive interventions; for example, identifying —best practice— for reducing negative health effects of downsizing, or implementing strategies to reduce employee uncertainty and ambiguity during downsizing. Finally, proposals must include an evaluation component which describes the approach and method by which the efficacy of the intervention(s) will be assessed.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and conduct a study of the health and performance consequences of downsizing and/or reorganization.

2. Develop a research protocol that reviews the pertinent downsizing/reorganization and organizational stress/health literatures, and describes the study methodology, data to be collected and the proposed analysis of the data; present the protocol to a panel of peer reviewers and revise the protocol as required for final approval by CDC/NIOSH.

3. Conduct all required medical and laboratory tests on workers participating in the study, collect questionnaire/interview information and identifying data on workers, and analyze data.

4. Prepare a final report summarizing the study methodology, results obtained, conclusions reached and recommendations for preventing the negative health and performance consequences of downsizing and additional research needs.

5. Where appropriate, collaborate with CDC/NIOSH scientists who are working in complementary research areas.

6. Report research results to the scientific community via presentations at professional conferences and articles in peer-reviewed journals.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, engineering, environmental, industrial hygiene, and clinical technical assistance, as needed, for the successful completion of this project.

2. Identify and convene Peer Review Panel to review draft study protocol.

3. Assist in formulating the study design, the analysis of data collected by the recipient, interpretation of the results, and preparation of the written reports.

4. Engage in scientific collaboration in research areas of mutual interest and investigation.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. *Understanding of the Problem (25%)*

Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the research needed to document the health and performance consequences of downsizing and/or reorganization and the objective of the proposed cooperative agreement, and (b) relevance of the proposal to the objective.

2. *Study Design and Project Planning (40%)*

Steps proposed in planning and implementing this project, and the respective responsibilities of the applicant for carrying out those steps, the proposed approach to the study and the draft (or detailed outline) of the study protocol. The applicant's schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments.

3. *Program Personnel (25%)*

Qualification and time allocation of the professional staff to be assigned to this project and applicant's ability to provide knowledgeable staff required to perform the applicant's responsibilities in this project, and the approach to be used in carrying out those responsibilities.

4. *Facilities and Resources (10%)*

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

5. *Budget Justification (not scored)*

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. Indian tribes are strongly encouraged to request tribal government review of the proposed application. A current list of SPOCs is included in the application kit.

If SPOCs or tribal governments have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.956.

Other Requirements

Paperwork Reduction Act

Projects funded through the cooperative agreement mechanism of this program involving the collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 17, 1995.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 572. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Lawrence R. Murphy, Ph.D., Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8171, Fax (513) 533–8510, Email (Internet): LRM2@NIOBBS1.EM.CDC.GOV.

Please refer to Announcement 572 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 12, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14771 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 559]

National Institute for Occupational Safety and Health; Chronic Beryllium Disease Among Beryllium-exposed Workers

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement to develop a model program for the prevention, diagnosis, and treatment of chronic beryllium disease (CBD) among individuals who have been occupationally exposed to beryllium and/or beryllium compounds.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 671(e)(7)).

Smoke-free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-, and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $400,000 is available in FY 1995 to fund one award. It is expected that the award will begin on or about September 30, 1995, and will be

made for a 12-month budget period within a project period of 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to conduct a program of applied research in the prevention of CBD among individuals who have been occupationally exposed to beryllium and/or beryllium compounds. The National Institute of Occupational Safety and Health (NIOSH) has conducted studies of or is aware of a number of such cohorts which are listed in the attached appendix. These cohorts, as well as other beryllium- exposed cohorts not included in this list, may be identified in the research proposal.

Within the past ten years, an *in vitro* test for identifying sensitization to beryllium was developed. Currently, the blood lymphocyte proliferation test (LPT also known as the lymphocyte transformation test or LTT) to beryllium salts is available from a limited number of laboratories in the U.S. The sensitivity, specificity, positive predictive value, and negative predictive value of this test with respect to CBD have been estimated based on its application in a few occupational cohorts. However, these estimates need to be confirmed in other groups of beryllium-exposed workers. Also, it is not known whether interventions (e.g. removal from exposure or early treatment with corticosteroids) impede the progression from sensitization to clinical disease.

Although sensitization can occur after short-term exposure to beryllium, the risk of sensitization appears to increase with more exposure. These findings suggest that both individual susceptibility and exposure conditions are important in the onset of CBD. To improve the prevention of beryllium disease, several research areas need exploration.

These include:

1. The characterization of the natural history of CBD;
2. Identification of specific beryllium compounds associated with CBD; and
3. Evaluation of a possible dose-response relationship between CBD and exposure to beryllium (with beryllium exposures characterized in different manners, e.g., levels, duration, methods of handling, etc.).

In many of the published studies, the small number of sensitized individuals and CBD cases has limited the power to discern process-related risks and temporal patterns. In addition, past studies have suffered from a lack of detailed exposure data. Larger sample sizes and improved exposure data are needed to address these data gaps.

This program will identify applied research needs, formulate a plan to respond to those needs, evaluate the effectiveness of the program interventions, and disseminate research results. Specifically, this cooperative agreement is intended to greatly improve prevention efforts for CBD, including primary and or secondary prevention activities.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Identify research needs relative to the prevention of CBD among people who have been occupationally exposed to beryllium and/or beryllium compounds.
2. Develop a research protocol that reviews the pertinent CBD literature and describes the study methodology, the data to be collected and the proposed analysis of the data. Present the protocol to a panel of peer reviewers and revise the protocol as required for final approval by CDC.
3. Conduct all required medical and laboratory tests on workers participating in the study; collect necessary exposure and identifying data on workers; analyze data.
4. Prepare a final report summarizing the study methodology, results obtained, conclusions reached and recommendations for preventing CBD, and additional research needs.
5. Where appropriate, collaborate with CDC/NIOSH scientists who are working in complementary research areas.
6. Report research results to the scientific community via presentations at professional conferences and articles in peer-reviewed medical journals.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, engineering, environmental, industrial hygiene, and clinical technical assistance.
2. Identify reviews and/or clearances that must be fulfilled by the recipient, and identify and convene Peer Review Panel to review draft study protocol.
3. Assist in formulating the study design, the analysis of the data collected, interpretation of the results, and preparation of the written reports.
4. Engage in scientific collaboration in research areas of mutual interest and investigation.
5. Assist in the reporting of research results to the scientific community via presentations at professional conferences and articles in peer-reviewed medical journals.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. *Understanding of the Problem (25%)*

Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the research needed to prevent CBD and the objective of the proposed cooperative agreement, and (b) relevance of the proposal to the objective.

2. *Study Design and Project Planning (35%)*

Steps proposed in planning and implementing this project, and the respective responsibilities of the applicant for carrying out those steps the proposed approach to the study and the outline of the study protocol. The applicant's schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments.

3. *Program Personnel (30%)*

Qualification and time allocation of the professional staff to be assigned to this project and applicant's ability to provide knowledgeable staff required to perform the applicant's responsibilities in this project, and the approach to be used in carrying out those responsibilities.

4. *Facilities and Resources (10%)*

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

5. *Budget Justification (not scored)*

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 398 (OMB No. 0925–0001) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 21, 1995.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 559. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Paul K. Henneberger, Sc.D., Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop 234, 1095 Willowdale Road, Morgantown, WVA 26505–2845, telephone (304) 285–5756.

Please refer to Announcement 559 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001- 00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 12, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

Appendix

Beryllium-Exposed Worker Cohorts

Below is a listing of facilities in which workers are or have been known to be exposed to beryllium.

Beryllium Production Facilities

NIOSH conducted a cohort mortality study of employees at the Cabot Berylco plants in Reading and Hazelton, Pennsylvania, and at the Lorain, Perkins, Lucky, St. Clair, and Elmore, Ohio plants of the Brush-Wellman Company (Ward, Am. J. Indust. Med. 1992). These seven plants represent all of the beryllium production plants that have been in operation in the United States. Collectively, the plants cover 57 years of beryllium exposure history, with the oldest facility beginning operations in 1935 and the most recent beginning in 1963. Approximately 9200 workers have been employed at these facilities. The names, location, and years of operation of these plants are listed in Table 1.

Defense Nuclear Facilities

Facilities at which there are or were beryllium operations are listed in Table 2. Of these, the major beryllium operations sites are/were Rocky Flats, Ames, Argonne National Laboratory, Y–12, Lawrence Livermore National Laboratory (LLNL), and Los Alamos National Laboratory (LANL). Because the criteria for designation as a ''beryllium worker'' have differed within and between facilities, it is difficult to state the size of the worker population at these facilities exposed to beryllium. However, it has been estimated that more than 10,000 persons may have qualified at some time as a beryllium worker at these facilities.

TABLE 1.—BERYLLIUM PRODUCTION PLANTS IN THE UNITED STATES

Company	Plant	Date start production	Date end production
	Lorain, Ohio	1935	1948
	Lucky, Ohio	1950	1958
	Elmore, Ohio	1952	(1)
		.....	(2)
Brush Wellman	Perkins (Cleveland, Ohio)	1937	1963
	St. Clair (Cleveland, Ohio)	1963	1973
Kawecki-Berylco/Cabot	Reading, Pennsylvania	1935	(1)

TABLE 1.—BERYLLIUM PRODUCTION PLANTS IN THE UNITED STATES—Continued

Company	Plant	Date start production	Date end production
Berylco NGK Metals	.....	.....	.....
	Hazelton, Pennsylvania	1958	1978

[1] Presently.
[2] Operating.

TABLE 2.—DEFENSE NUCLEAR FACILITIES WITH CURRENT AND/OR HISTORICAL BERYLLIUM OPERATIONS

Defense nuclear facility	Location
Y–12 Plant	Oak Ridge, Tennessee.
Oak Ridge National Laboratory (X–10).	Oak Ridge, Tennessee.
Inhalation Toxicology Research Institute.	Albuquerque, New Mexico.
Pantex Plant	Amarillo, Texas.
Mound Laboratory	Miamisburg, Ohio.
Kansas City Plant	Kansas City, Missouri.
Los Alamos National Laboratory.	Los Alamos, New Mexico.
Pinellas Plant	Largo, Florida.
Rocky Flats Plant	Golden, Colorado.
Sandia National Laboratory.	Albuquerque, New Mexico.
Ames Laboratory	Iowa State University, Ames, Iowa.
Argonne National Laboratory.	University of Chicago Metallurgical Laboratory and Idaho National Engineering Laboratory.
Hanford Site (Westinghouse), Pacific Northwest Laboratories.	Richland, Washington.
Lawrence Livermore National Laboratory.	Livermore, California.
Lawrence Berkeley National Laboratory.	Berkeley, California.
Atomic International, Canoga Park.	Santa Susana, California.
Knolls Atomic Power Laboratory.	Schenectady, New York.

[FR Doc. 95–14772 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–19–P

Office of the Secretary

Notice of Three Meetings of the Commission on Research Integrity

Pursuant to P.L. 92–463, notice is hereby given of three public meetings of the Commission on Research Integrity in the Washington/Baltimore Metropolitan Area.

The first meeting will be at the Washington Dulles Airport Marriott Hotel, in Chantilly, VA, on Monday and Tuesday, June 26–27, from 8:30 a.m. until 5 p.m. on day one, and from 9 a.m. until 5 p.m. on day two. The second meeting will be at the Belmont Conference Center in Elkridge, MD, Sunday through Tuesday, July 30 through August 1, from 10 a.m. until 4:30 p.m. on all three days. The third meeting will be at the Washington Dulles Airport Marriott Hotel on Monday and Tuesday, September 18–19, from 8:30 a.m. until 5 p.m. on day one, and from 9 a.m. until 5 p.m. on day two.

The Commission will be working on a report and recommendations to congressional oversight committees and the Secretary of the Department of Health and Human Services on the administration of Section 493 of the Public Health Service Act, as amended by and added to by Section 161 of the NIH Revitalization Act of 1993. Proposed recommendations may address the following topics: A new definition of research misconduct, a model assurance for institutions concerning research integrity, codes of ethics for professional associations, a bill of rights and responsibilities for witnesses (also called ''whistleblowers'') in alleged cases of research misconduct, and the teaching of research ethics and of the responsible conduct of research.

Interested parties are advised to call the Executive Secretary, Ms. Henrietta Hyatt-Knorr, shortly before each meeting to verify the date, place, and agenda. Persons wishing to make a presentation, either in writing or orally, should contact her in writing at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, by phone at (301) 443–5300, by fax at (301) 443–5351, or via internet at hhyatt@oasch.ssw.dhhs.gov. Ms. Hyatt-Knorr will furnish the Committee charter, a Committee roster, and/or a meeting agenda upon request. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Barbara E. Bullman,

Policy Analyst.

[FR Doc. 95–14774 Filed 6–16–95; 8:45 am]

BILLING CODE 4160–17–P

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 10, 1995.

Time: 9 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Monica F. Woodfork, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: June 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14757 Filed 6–15–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: July 10, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge II, Room 4112, Telephone Conference.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.
Date: July 22, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4218, Telephone Conference.
Contact Person: Dr. Shirley Hilden, Scientific Review Admin., 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301) 435–1197.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: June 30, 1995.
Time: 1:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Abubakar Shaikh, Scientific Review Admin., 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892, (301) 435–1042.

Name of SEP: Multidisciplinary Sciences.
Date: July 5–6, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Donald Schneider, Scientific Review Admin., 6701 Rockledge Drive, Room 5104, Bethesda, MD 20892, (301) 435–7053.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14758 Filed 6–15–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: June 26, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 6701 Rockledge Drive, Room 5208, Bethesda, MD 20892, (301) 435–1175.

Name of SEP: Multidisciplinary Sciences.
Date: July 17–18, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 6701 Rockledge Drive, Room 5208, Bethesda, MD 20892, (301) 435–1175.

Purpose/Agenda

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: July 3, 1995.
Time: 8:30 a.m.
Place: Mariott Residence Inn, Bethesda, MD.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: July 5, 1995.
Time: 8:30 a.m.
Place: Marriott Residence Inn, Bethesda, MD.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: July 6, 1995.
Time: 8:30 a.m.
Place: Marriott Residence Inn, Bethesda, MD.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–1782.

Name of SEP: Multidisciplinary Sciences.
Date: July 18, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5112, Telephone Conference.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 425–1169.

Name of SEP: Clinical Sciences.
Date: July 19, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge II, Room 4106, Telephone Conference.
Contact Person: Dr. Josephine Pelham, Scientific Review Admin., 6701 Rockledge Drive, Room 4106, Bethesda, MD 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.
Date: August 2, 1995.
Time: 8:30 a.m.
Place: Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Harold Davidson, Scientific Review Admin., 6701 Rockledge Drive, Room 4216, Bethesda, MD 20892, (301) 435–1776.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14759 Filed 6–14–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on June 9.

1. Weekly and Annual Morbidity and Mortality Reports—0920–0007—Revision, consolidation with 0920–0014, no change in reporting forms or procedures—The timeliness of reporting of nationally notifiable diseases for publication in the MMWR provides information which CDC and State epidemiologists use to detect and more effectively interrupt outbreaks. Also, reporting provides the timely information needed to measure and demonstrate the impact of changed immunization laws or a new therapeutic therapy. The data are widely used by public health professionals concerned with the trends of diseases in the U.S. Respondents: State, Local or Tribal Government. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

	No. of respondents	No. of responses/respondents	Avg. burden/response (hr)
Weekly report	178	52	.45
Annual report	57	1	12.32

Estimated total annual burden—4820 hours.

2. Exploratory Study of Reasons Kidney Transplant Waiting List Patients are Unavailable for Organ Offers—New—This is a small-scale study of the extent and causes of patient unavailability for transplant. Information will be collected from transplant center staff, transplant candidates, and transplant recipients on methods used to contact candidates and reasons they are unavailable when an organ offer is made. Respondents: Individuals or households; Business or other for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondents	Avg. burden/response (hr)
Survey of transplant	40	1	1.75
Survey of transplant	100	1	.58
Survey of transplant recipients	100	1	.58

Estimated total annual burden—186 hours.

3. Survey of Health Care Providers Participating in Rural Telemedicine Networds—New—This mail survey of all health care providers participating in rural telemedicine projects will provide baseline data on the systems, a minimum data set for future studies, and evaluation methodologies for future evaluations of these systems. Respondents: Business or other for-profit; Not-for-profit institutions; Number of Respondents: 250; Number of Responses per Response: 1; Average Burden per Response: 2.12 hours; Estimated Total Annual Burden: 530 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: June 9, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–14784 Filed 6–15–95; 8:45 am]

BILLING CODE 4160–01–M

Implementation and Evaluation of U.S. Public Health Service Recommendations for Counseling and Testing of Pregnant Women, Prevention of Perinatal Transmission, and Links to Care of HIV-Infected Women and Children; Public Meeting

The Public Health Service announces the following meeting.

NAME: Implementation and Evaluation of U.S. Public Health Service (PHS) Recommendations for Counseling and Testing of Pregnant Women, Prevention of Perinatal Transmission, and Links to Care of HIV-Infected Women and Children—Public meeting between PHS, outside experts, and other interested parties.

TIME AND DATES: 8:30 a.m.–5 p.m., July 11–12, 1995.

PLACE: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW, Atlanta, Georgia 30343.

STATUS: The meeting will be open to the public, limited only by space available.

PURPOSE: To obtain individual comments on strategies to implement and evaluate the Centers for Disease Control and Prevention (CDC) guidelines on HIV counseling and testing of pregnant women, to ensure the HIV-infected women and their newborns are entered into a continuum of services, to evaluate these implementation steps, and to consider appropriate surveillance and evaluation mechanisms to monitor the epidemic in women and children.

The structure of the meeting will include workshops for discussion of the scientific and programmatic issues involved in implementation, evaluation, and monitoring of interventions to reduce the risk of perinatal transmission of HIV.

CONTACT PERSON FOR MORE INFORMATION: Connie Granoff, Committee Management Specialist, Division of HIV/AIDS Prevention, National Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: June 12, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 95–14770 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 16, 1995.

ADDRESSES: For further information, contact David Pollack, Department of Housing and Urban Development, Room 7254, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Correction

The 144 Family Housing Facilities which appeared in the April 21, 1995 Notice is located in Adak, Alaska. They were inadvertently published for China Lake, California.

Dated: June 9, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–14566 Filed 6–15–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1430–01; NMNM 90102]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw approximately 770.00 acres of National Forest System lands for the Sipapu Ski Area expansion. This notice closes the lands for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a public meeting should be received on or before September 14, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On May 19, 1995, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Carson National Forest

T. 22 N., R. 13 E.,

Sec. 8, E½SE¼NE¼ and E½NE¼SE¼, unsurveyed and within the Santa Barbara Grant Survey;

Sec. 9, S½S½N½N½, S½N½, SW¼, and N½SE¼, unsurveyed and within the Santa Barbara Grant Survey;

Sec. 10, lots 2 and 3, and approximately 23.01 acres in the SW¼NW¼ partly unsurveyed and within the Santa Barbara Grant Survey (excluding SHC Patent No. 883043), and approximately 5.01 acres of the NW¼SE¼ partly unsurveyed and within the Santa Barbara Grant Survey, and SW¼NE¼;

Sec. 15, SE¼NW¼ and N½SW¼, unsurveyed and within the Santa Barbara Grant Survey;

Sec. 16, NE¼NW¼ unsurveyed and within the Santa Barbara Grant Survey.

The areas described aggregate approximately 770.00 acres in Taos County.

The purpose of the proposed withdrawal is to protect the area and future investment in the proposed ski area expansion project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied, canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations, including, but not limited to construction and operation of the proposed ski area improvements.

Dated: May 30, 1995.

Michael R. Ford,

District Manager.

[FR Doc. 95–14096 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Lyrate Bladderpod for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the lyrate bladderpod (*Lesquerella lyrata*). This small annual occurs in northwest Alabama with populations known from Colbert, Franklin, and Lawrence Counties. Plants occur in shallow soils adjacent to outcrops supporting cedar glades. Populations occur on private land with plants extending onto county and state-maintained road rights-of-way at several sites. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 1, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900, ext. 28).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will

consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the lyrate bladderpod (*Lesquerella lyrata*). This annual plant, in the mustard family, occurs near cedar glade areas in Colbert, Franklin, and Lawrence Counties, Alabama. Currently, none of the populations occur on relative pristine cedar glades, as plants are located in gladey pastures, fields, and on roadsides. The lyrate bladderpod was listed as threatened in 1990 due to its limited distribution (only three populations are known) and threats from herbicide usage, road improvement, and increasing development in the area. The lyrate bladderpod is believed to be an early successional species which is eliminated by the shade and competition of invading perennials. Active management will be needed to maintain populations.

The objective of this proposed plan is to delist the lyrate bladderpod. Delisting will be considered when a minimum of 9 demonstrably secure and self-sustaining populations exist. Actions needed to reach this goal include: (1) Protecting, managing, and monitoring populations, (2) surveying for new populations, (3) gathering autecological data, (4) preserving genetic stock, and (5) providing information to the public to assist in the conservation efforts. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 9, 1995.

Robert Bowker,

Field Supervisor.

[FR Doc. 95–14733 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Sudbury, Assabet and Concord Rivers Study Committee; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, July 13, 1995.

The Committee was established pursuant to Public law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, July 13, 1995, at the Upper Level Conference Room, Concord Town Offices, 141 Keyes Rd., Concord, MA. Driving Directions: From Concord town center, take rotary around green. Turn right on to Lowell Rd. after after Colonial Inn. Keyes Rd. is the first left, after supermarket and gas station. Town Offices are on right 100 yds. from intersection; #141 is renovated brick building on right.

The agenda is as follows:

I. Welcome and introductions, approval of minutes from 03/16/95 meeting

II. Brief questions and comments from public

III. Report on Town Meeting Votes—Town Representatives

IV. Next steps: Legislation and Study Report—Cassie

V. Issues of Local Concern

VI. Other Business

Adjournment

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Chrysandra L. Walter,

Interim Deputy Field Director.

[FR Doc. 95–14728 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of a loan to the Government of Tunisia (''Borrower'') as part of USAID's development assistance program. The proceeds of this loan will be used to finance environmental infrastructure and services for the benefit of low-income families in Tunisia. At this time, the Government of Tunisia has authorized USAID to request proposals from eligible lenders for a loan under this program of $17 Million U.S. Dollars (US$17,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project numbers are indicated below:

Government of Tunisia

Project Nos: (1) 664-HG–004D—(2) 664-HG-V

Amount: US$17,000,000

Housing Guaranty Loan No.:

664-HG–009 B01 (tranche A–$2,000,000)
664-HG–10 A01 (tranche B–$5,000,000)
664-HG–11 B01 (tranche C–$10,000,000)

Attention: Mr. Said MRABAT, Directeur Général des Finances Exterieures, Banque Centrale de Tunisie, Tunis, Tunisia

Telex Nos.: BANCENT 15375, 13311, 13308
Telefax No.: 216–1–340–615 (preferred communication)
Telephone Nos.: 216–1–351–813, 254–000

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by *Tuesday, June 27, 1995, 12:00 noon Eastern Daylight Savings Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Lane Smith or Ms. Monia Ben Khalifa, Regional Housing and Urban Development Office, USAID/NENA, USAID/Tunisia, c/o American Embassy, Tunis, Tunisia. (Street address: 144, Avenue de la Liberté, Tunis, Tunisia); Telex No.: 14182

USAID TN; Telefax No.: 216–1–783–350 (preferred communication); Telephone No.: 216–1–784–300.

Mr. Charles Billand, Assistant Director, Mr. Peter Pirnie, Financial Advisor. Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, D.C. 205023–1822. Telex No.: 892703 AID WSA; Telefax No.: 703/875–4384 or 875–4639 (preferred communication); Telephone No.: 703/875–4300 or 875–4510.

For your information the Borrower is currently considering the following terms:

(1) *Amount*: U.S. $17 million.

(2) *Term*: 30 years.

(3) *Grace Period*: Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate*: Alternatives of fixed, variable rates and variable rates with ''caps'' are requested.

(a) *Fixed Interest Rate*: If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7⅝% U.S. Treasury Bond due February 15, 2025. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate*: To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(c) Variable Interest Rate with ''Caps'': Offers should include a maximum (cap) rate ranging from 10% to 12% per annum, and are to be based on the six month British Bankers Association LIBOR. The rate should be adjusted weekly.

(5) *Prepayment*: (a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees*: Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, and out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date*: Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and hereafter, subject to certain conditions required of the Borrower by USAID as set forth in agreement between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the ''Act'').

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Michael J. Lippe, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, D.C. 20523–1822, Fax Nos: 703/875–4384 or 875–4639, Telephone: 703/875–4300.

Dated June 13, 1995.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 95–14866 Filed 6–15–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Divisions; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified herein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

CFR parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA950001 (Feb. 10, 1995)
MA950002 (Feb. 10, 1995)
MA950003 (Feb. 10, 1995)
MA950007 (Feb. 10, 1995)
MA950008 (Feb. 10, 1995)
MA950009 (Feb. 10, 1995)
MA950017 (Feb. 10, 1995)
MA950018 (Feb. 10, 1995)
MA950019 (Feb. 10, 1995)
MA950020 (Feb. 10, 1995)
MA950021 (Feb. 10, 1995)
Vermont
VT950025 (Feb. 10, 1995)

Volume II

None

Volume III

Florida
FL950056 (Feb. 10, 1995)
Georgia
GA950004 (Feb. 10, 1995)
GA950050 (Feb. 10, 1995)

Volume IV

Indiana
IN950001 (Feb. 10, 1995)
IN950002 (Feb. 10, 1995)
IN950003 (Feb. 10, 1995)
IN950004 (Feb. 10, 1995)
IN950005 (Feb. 10, 1995)
IN950006 (Feb. 10, 1995)
IN950016 (Feb. 10, 1995)
IN950018 (Feb. 10, 1995)
IN950019 (Feb. 10, 1995)
Wisconsin
WI950017 (Feb. 10, 1995)
WI950021 (Feb. 10, 1995)

Volume V

Arkansas
AR950001 (Feb. 10, 1995)
Kansas
KS950006 (Feb. 10, 1995)
KS950012 (Feb. 10, 1995)
Iowa
IA950003 (Feb. 10, 1995)
IA950005 (Feb. 10, 1995)
IA950007 (Feb. 10, 1995)
IA950014 (Feb. 10, 1995)
IA950019 (Feb. 10, 1995)
IA950032 (Feb. 10, 1995)
IA950038 (Feb. 10, 1995)
Oklahoma
OK950013 (Feb. 10, 1995)
OK950014 (Feb. 10, 1995)

Volume VI

Arizona
AZ950001 (Feb. 10, 1995)
AZ950002 (Feb. 10, 1995)
AZ950005 (Feb. 10, 1995)
AZ950007 (Feb. 10, 1995)
AZ950010 (Feb. 10, 1995)
AZ950011 (Feb. 10, 1995)
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AZ950014 (Feb. 10, 1995)
AZ950015 (Feb. 10, 1995)
AZ950016 (Feb. 10, 1995)
AZ950017 (Feb. 10, 1995)
Colorado
CO950001 (Feb. 10, 1995)
CO950006 (Feb. 10, 1995)
CO950008 (Feb. 10, 1995)
CO950009 (Feb. 10, 1995)
CO950014 (Feb. 10, 1995)
CO950020 (Feb. 10, 1995)
CO950021 (Feb. 10, 1995)
CO950023 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
Washington
WA950001 (Feb. 10, 1995)
WA950002 (Feb. 10, 1995)
WA950003 (Feb. 10, 1995)
WA950010 (Feb. 10, 1995)
WA950011 (Feb. 10, 1995)
WA950013 (Feb. 10, 1995)
WA950026 (Feb. 10, 1995)
Wyoming
WY950013 (Feb. 10, 1995)
WY950023 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 9th day of June 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–14526 Filed 6–15–95; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 12, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ((202) 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: New.

Agency: Bureau of International Labor Affairs.

Title: Senior Technical Assistance Register (STAR).

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 1,000.

Estimated Time Per Respondent: 22.5 minutes.

Total Burden Hours: 375.

Description: The Bureau of International Labor Affairs is seeking to develop a new register entitled STAR (Senior Technical Assistance Register) designed to identify specialists in the fields of labor and social affairs who would be able to render voluntary advisory services to developing countries in which the Department is providing development assistance.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Weekly Claims and Extended Benefits Data; Weekly Initial and Continued Claims Report.

OMB Number: 1205–0028.

Agency Number: ETA 538 and 539.

Frequency: Weekly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: ETA 538=53, ETA 539=53.

Estimated Time Per Respondent: ETA 538=30 minutes, ETA 539=50 minutes.

Total Burden Hours: 3,675.

Description: The Federal-State Extended Unemployment Compensation Act of 1970 and amendments provide for extended benefits to be paid to claimants exhausting regular benefits in a State if that State has certain levels of insured unemployment as measured a thirteen week moving average of the insured unemployment rate. The ETA 539 report is the vehicle States use to report weekly insured unemployment and other information necessary to calculate the trigger rates. The ETA 538 is used to release an ''advance'' figure to the economic data.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Benefit Rights and Experience.

OMB Number: 1205–0177.

Agency Number: ETA 218.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 107.

Description: This information collection, authorized under Section 303(a)(6) of the Social Security Act, provides information for solvency studies, in budgeting projections, and for evaluation of adequacy of benefit formulas to analyze effects of proposed changes in State law.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–14781 Filed 6–15–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meetings

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 Chemical and Transport System (#1190).

Date and Time: July 5, 1995; 8 a.m. to 5. p.m.

Place: National Science Foundation, 4201 Wilson boulevard, Room 580, Arlington, VA 22230, (703) 306–1370.

Type of Meeting: Closed.

Contact Person: Dr. Maria K. Burka, Program Director, Chemical Reaction Processes, CTS, Room 525, (703) 306–1371.

Purpose of Meeting

To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

To review and evaluate nominations for the NSF Microwave-Induced Reaction Initiative 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: June 8, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–14736 Filed 6–15–95; 8:45 am]

BILLING CODE 7555–01–M

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 and Committee Code: Special Emphasis Panel in Civil and Mechanical System (#1205).

Date and Time: July 6 and 7, 1995; 8 a.m. to 5 p.m.

Place: Room 530 and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Oscar W. Dillon, Dr. William A. Spitzig; Program Director(s), Mechanics and Materials Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting

To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

To review and evaluate Unsolicitated 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: June 8, 1995.

M. Rebecca Winkler,

Committee Management Officers.

[FR Doc. 95–14737 Filed 6–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications 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 Electrical and Communications System (#1196).

Date and Time: July 7, 1995; 8:30 a.m. to 5:00 p.m.

Place: Room 320, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Albert Harvey, Acting Program Director, Quantum Electronics, Waves and Beams, Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230 Telephone: (703) 306–1339.

Purpose

To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

To review and evaluate proposals in the Quantum Electronics, Waves & Beams as part of the selection process for awards.

Reason for Closing:

The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c)(4) and (6) the Government in the Sunshine Act.

Dated: June 8, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–14738 Filed 6–15–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–499]

Exemption

In the Matter of Houston Lighting & Power Company, City Public Service Board of San Antonio, City of Austin, Texas; (South Texas Project, Unit 2).

I

Houston Lighting & Power Company, (the licensee) is the holder of Facility Operating License No. NPF–80, which authorizes operation of the South Texas Project, Unit 2. The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Matagorda County, Texas.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests. (CILRTs), at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspection.

III

By letter dated March 16, 1995, Houston Lighting & Power requested relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period. The requested exemption would permit an interval extension for the second Type A test of approximately 18 months (from the currently scheduled outage, Fall 1995, until the next planned refueling outage, Spring 1997). This request does not alter the requirement that the third Type A test shall be conducted when the plant is shutdown for the 10-year plant inservice inspection.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The underlying purpose of the requirement to perform three Type A CILRTs, at approximately equal intervals during each 10-year service period, is to assure that leakage through the primary reactor containment is detected and does not exceed allowable leakage rate values. The licensee has stated that the existing Type B and C local leak rate test (LLRT) programs are not being modified by this request, and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at South Texas during the two Type A tests conducted in 1988 (the pre-operational Type A test) and 1991 (the first periodic Type A test), that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Therefore, consistent with 10 CFR 50.12, paragraph (a)(2)(ii), application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Section III.D.1.(a) of Appendix J to 10 CFR part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide an interval extension for the Type A test by approximately 18 months. The Commission has determined that pursuant to 10 CFR 50.12(a)(1) that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. Both previous Type A tests were within the acceptance limits, and both passed with significant margin. In addition, at the staff's request, the licensee has verbally committed to perform the general containment inspection specified in Section V.A of appendix J even though this inspection is only required prior to a Type A test.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given, in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only about 3% of leakage that exceeds current requirements is detectable only by CILRTs, and those few failures were only marginally above prescribed limits. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The South Texas Project, Unit 2 experience has also been consistent with this.

The Nuclear management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and

in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493).

Based on generic and plant-specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix J Type A test to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 28431).

This Exemption is effective upon issuance and shall expire at the completion of the 1997 refueling outage.

Dated at Rockville, Maryland, this 9th day of June 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Deputy Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14791 Filed 6–15–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21128; 812–9486]

SEI Financial Management Corp. and SEI Financial Services Co.; Notice of Application

June 9, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: SEI Financial Management Corporation and SEI Financial Services Company (collectively, ''SEI'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting applicants from sections 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit bank-sponsored collective investment funds to transfer their assets to open-end management investment companies advised by the bank and administered or distributed by SEI.

FILING DATE: The application was filed on February 16, 1995, and was amended on May 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o SEI Financial Services Company, 680 East Swedesford Road, Wayne, Pennsylvania 19087, Attention: Kathryn L. Stanton, Esq.; and Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037, Attention: Jeremy N. Rubenstein.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUMMARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. SEI serves as administrator and distributor for a number of registered open-end management investment companies (the ''Funds''), including Funds that are advised by banks. SEI requests that the relief sought herein apply to any Fund distributed or administered by SEI and any Fund that may in the future be distributed or administered by SEI or any entity controlling, controlled by, or under common control with SEI.

2. Subject to the supervision of the Funds' respective boards of directors or trustees (the ''Board of Directors''), SEI provides or procures administrative and other services necessary for the operation of the Funds and their portfolios. SEI may provide various services to the Funds, although the precise services provided by SEI to a particular Fund will depend on SEI's contract with that Fund. For any Fund relying on the requested order, however, SEI will perform fund accounting services that will include responsibility for maintaining the Fund's general ledger and the preparation of Fund financial statements, determining the net asset value of both the Fund's assets and of the Fund's shares, calculating Fund expenses and controlling Fund disbursements, preparing and filing semi-annual reports on Form N–SAR and notices pursuant to rule 24f–2, coordinating the preparation and filing of the Fund's tax returns, and providing the Fund with individuals reasonably acceptable to the Fund's Board of Directors for nomination, appointment, or election as officers of the Fund.

3. From time to time, certain Funds participate in the conversion of assets from bank-sponsored collective investment funds (''CIFs'') into mutual fund shares. As part of the conversion, a Fund typically agrees to accept an in-kind transfer of securities from a CIF with substantially similar investment objectives in exchange for shares with an equal net asset value. Frequently, the bank that sponsors the converting CIF (the ''Bank'') also serves as the Fund's investment adviser or is affiliated with such adviser. As a result, the Bank may be deemed to control both the CIF and the Fund, and the CIF and the Fund may be affiliated persons of each other under the Act. In addition, some of the assets in the converting CIF may belong to employee retirement plans established for employees of the Bank or other affiliated persons (the ''Affiliated Plans''). Such employees and other affiliated persons of the Bank might be considered second-tier affiliates of the Fund.

4. Although the SEC has taken a no-action position with respect to certain CIF conversions, that position is conditioned on affiliated persons, or second-tier affiliates, of the Funds having no beneficial interest in the proposed transactions. Federated Investors (pub. avail. April 21, 1994). A Bank acting as investment adviser to a Fund may be deemed to have a beneficial interest in the proposed transactions because the Bank's Affiliated Plans invest in the converting CIFs. Accordingly, applicants request an exemptive order to permit the Funds to accept in-kind transfers of the assets of the Affiliated Plans (the ''Proposed Transfers'').

5. Each Fund is or will be registered as an open-end management investment company under the Act. Each Fund's shares are or will be offered and sold pursuant to an effective registration statement under the Securities Act of

1933 (the ''Securities Act''). The overall management of each Fund, including the negotiation of investment advisory and other service contracts, rests with the members of the Board of Directors of the Fund, at least 40% of whom are not interested persons (as defined in section 2(a)(19) of the Act) of the Fund.

6. The CIFs are sponsored by Banks as investment vehicles for employee retirement plans. The CIFs are excluded from the definition of investment company under section 3(c)(11) of the Act, which excepts CIFs that consist solely of the assets of employee retirement plans qualified under section 401 of the Internal Revenue Code or similar governmental plans described in section 3(a)(2)(C) of the Securities Act (each, a ''Plan''). Some of the assets in the CIFs may belong to Affiliated Plans.

7. In addition to sponsoring a CIF, a Bank or its affiliate also may serve as the Fund's investment adviser, and may receive investment advisory fees from the Fund. Banks frequently determine that Plan holders would be better served if sponsored CIFs were converted into Funds with substantially similar investment objectives so that Plan holders may enjoy the enhanced disclosure and other protections of the Securities Act and the Act. In addition, investment of Plan assets through the Funds allows the sponsors of, and participants in, the Plans to monitor more easily the performance of their investments daily (since information concerning the investment performance of the Funds generally will be available in daily newspapers of general circulation). Finally, by permitting more active marketing of investment services, conversion also may promote sales of Fund shares and thereby allow better diversification and risk spreading among all shareholders.

8. The procedures for transferring CIF assets to a Fund include a number of requirements to protect the interests of Plan holders. First, each Affiliated Plan will have an employee benefit review committee (the ''Committee'') or equivalent body that serves as a fiduciary for the Plan. In addition to the Bank, each unaffiliated Plan will have an independent or ''second'' fiduciary, independent of the Bank or its affiliates, that supervises the investment of that Plan's assets. This second fiduciary generally will be the unaffiliated Plan's named fiduciary, trustee, or sponsoring employer and will be subject to fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (''ERISA''). Under section 404(a) of ERISA, such fiduciaries must ensure that the investment of the Plans' assets is prudent and operates exclusively for the benefit of participating employees of the particular corporation and its subsidiaries and of the participating employees' beneficiaries.

9. Before transferring a CIF's assets to a Fund, a Bank will be required to seek and obtain the approval of the Committee, the Plan's second fiduciary, or both, as the case may be. The Bank will provide the Committee and the second fiduciaries with a current prospectus for the relevant portfolio(s) of the Fund and a written statement given full disclsoure of the fee structure and the terms of the Proposed Transfer. Such disclosure will explain why the Bank believes that the investment of Plan assets in the Fund is appropriate. The disclosure statement also will describe the limitations on the Bank, if any, regarding which Plan assets may be invested in shares of the Fund.

10. On the basis of such information, the Committee, the second fiduciary, or both, as the case may be, will decide whether to authorize the Bank to invest the relevant Plan's assets in the Fund and to receive fees from the Fund (subject to the Bank's agreement to waiver, credit, or rebate relevant fees). A Bank will not collect fees at both the Plan level and the Fund level for managing the same assets. Depending on the Plan, the Bank either will charge a fee only to the Fund or will rebate or credit its management fees at the Plan level.

11. Subject to obtaining the approvals discussed above and the order requested herein, SEI will assist a Bank, in SEI's capacity as administrator, to effect the acquisition of Fund shares by a Plan currently invested in a CIF. On the date of each transfer, the converting CIF will deliver to the corresponding Fund securities equal in value to the interest of each participating Plan, in exchange for Fund shares, using market values as of the time that the Fund calculates its net asset value at the close of business on that day. The Fund shares received by the CIF then will be distributed, *pro rata,* to all Plans who interests were converted as of that date. All securities transferred to a Fund will be securities for which market quotations are readily available, within the meaning of rule 17a–7(a) under the Act, and will be consistent with the investment objectives and fundamental policies of the corresponding Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines an ''affiliated person'' to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Section 17(d) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application. In passing upon such applications, the SEC considers whether participation by a registered investment company is consistent with the provision, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

3. Because a Bank that sponsors a CIF may have legal title to the assets of the CIF and therefore may be viewed as acting as a principal in the Proposed Transfers, and because a CIF and a Fund may be viewed as being under the common control of the Bank within the meaning of section 2(a)(3)(C), the Proposed Transfers may violate section 17(a). For the same reasons, the Proposed Transfers might be deemed to be a joint enterprise or other joint arrangement within the meaning of section 17(d).

4. Section 17(b) of the Act provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act. Under section 6(c) of the Act, the SEC may exempt any person or transaction from any provision of the Act, or any rule thereunder, to the extent that such exemption is necessary or appropriate

in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under sections 6(c) and 17(b) exempting them from section 17(a), and pursuant to section 17(d) and rule 17d–1, to permit the Proposed Transfers of CIF assets.

5. Applicants believe that the terms of the Proposed Transfers will be reasonable and fair to all of the Plans and to the shareholders of the Funds, do not involve overreaching on the part of any person, and will be consistent with the provisions, policies, and purposes of the Act. The Proposed Transfers will comply with rule 17a–7 under the Act in most respects, and also will comply with the policy behind the conditions set forth in rule 17a–8. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are effected at an ''independent market price'' and the investment company's Board of Directors reviews the transactions for fairness. Rule 17a–8 exempts certain mergers and consolidations from section 17(a) if, among other requirements, the investment company's Board of Directors determines that the transactions are fair.

6. Applicants will comply with rules 17a–7 and a7a–8 to the extent possible, as stated in the conditions to the requested order. The investment objectives and policies of the Funds and CIFs will be substantially similar. Therefore, it will be consistent with the policies of the Funds to acquire securities that the Bank has previously purchased for the CIFs on the basis of substantially similar objectives and policies. Moreover, the Funds will have the opportunity to purchase the portfolio securities of the CIFs at the current market price and with lower transaction costs than would have been possible purchasing such securities in the open market.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Proposed Transfers will comply with the terms of rule 17a–7(b) through (f).

2. The Proposed Transfers will not occur unless and until: (a) the Board of Directors of the Fund (including a majority of its disinterested directors) and the Committee or the Plans' second fiduciaries, as the case may be, find that the Proposed Transfers are in the best interests of the Fund and the Plans, respectively; and (b) the Board of Directors of the Fund (including a majority of its disinterested directors) finds that the interests of the existing shareholders of the Fund will not be diluted as a result of the Proposed Transfers. These determinations and the basis upon which they are made will be recorded fully in the records of the Fund and the Plans, respectively.

3. In order to comply with the policies underlying rule 17a–8, any conversion will have to be approved by a Fund's Board of Directors and any unaffiliated Plan's second fiduciaries who would be required to find that the interests of beneficial owners would not be diluted.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14749 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26304]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 9, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 3, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8505)

The Southern Company (''Southern''), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its nonutility subsidiary companies, Southern Electric International, Inc. (''Southern Electric'') and Mobile Energy Services Holdings, Inc. (''Mobile Energy''), each of 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338 (collectively, ''Applicants'') have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(d) of the Act and rules 43, 45, 46 and 54 thereunder.

By order dated December 13, 1994 (HCAR No. 26185) (''December 1994 Order''), Southern was authorized to organize and acquire all of the common stock of Mobile Energy.[1] The December 1994 Order also authorized Mobile Energy to acquire the energy and recovery complex (''Energy Complex'') at Scott Paper Company's (''Scott's) Mobile, Alabama paper and pulp mill.

At the acquisition closing, Mobile Energy purchased the Energy Complex from Scott and assumed Scott's obligations relating to $85 million outstanding principal amount of variable-rate solid waste revenue refunding bonds due 2019 (''Tax-Exempt Bonds'') issued by The Industrial Development Board of the City of Mobile, Alabama (''Board''). Southern funded the purchase price in part by making a $190 million interim loan as evidenced by Mobile Energy's promissory note (''Interim Note'').

Under the December 1994 Order, Mobile Energy was also authorized to enter into two separate interest rate swap agreements to hedge against adverse interest rate movements pending conversion or reissuance of the Tax-Exempt Bonds on a non-recourse basis[2] and the proposed sale of up to $230 million of senior secured non-recourse notes of Mobile Energy. On December 19, 1994, Mobile Energy entered into two separate interest rate hedging agreements with Barclays Bank PLC.

Applicants now propose to change the ownership structure of the Energy Complex and the financing and credit support proposals described in the December 1994 Order.

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[1] On May 17, 1995, Mobile Energy Services Company, Inc. changed its corporate name to Mobile Energy Services Holdings, Inc. Mobile Energy and southern Electric have been added as applicants/declarants under this post-effective amendment.

[2] Under the December 1994 Order, Mobile Energy is authorized to enter into agreements with the Board pursuant to which the Board would issue a new series of fixed-rate Tax-Exempt Bonds, the proceeds of which would be applied to redeem the outstanding Tax-Exempt Bonds.

It is proposed that Mobile Energy and Southern Electric organize a new subsidiary of Mobile Energy to be named Mobile Energy Services Company, L.L.C. (''Project Company'') and that Mobile Energy transfer ownership of the Energy Complex and related assets to Project Company. In addition, it is proposed that Project Company assume all liabilities and obligations of Mobile Energy relating to the Energy Complex, including liabilities under the Interim Note and under agreements with the Board, Scott and S.D. Warren Company (''Mill Owners''), and other third parties.

It is also proposed that Mobile Energy declare and pay to Southern a dividend in the form of a 1% membership interest in Project Company, which Southern will contribute to Southern Electric, so that Mobile Energy will hold 99% and Southern Electric will hold 1% of Project Company's membership interests.

Applicants also propose that Project Company issue, and Mobile Energy guaranty, up to $240 million principal amount of first mortgage bonds (''First Mortgage Bonds'') plus such additional principal amount of First Mortgage Bonds as may be required to fund (from the net proceeds thereof) the cost, if any, of terminating the outstanding interest rate hedging agreements between Mobile Energy and Barclays Bank PLC. The net proceeds from the sale of the First Mortgage Bonds (after deduction of the underwriting commission), together with other available funds, will be used: (i) to repay the Interim Note ($190 million, exclusive of interest) and return to Southern approximately $4.5 million of paid-in capital; (ii) to pay to Southern electric approximately $10.5 million, representing amounts paid or incurred by Southern Electric as preliminary project development costs and as costs paid or incurred by Southern Electric under the Facility Operations and Maintenance Agreement between Southern Electric and Mobile Energy; (iii) to finance the balance of the costs of certain capital improvements (estimated at approximately $12.7 million) required under the terms of certain project agreements to be made to the Energy Complex; (iv) to pay certain development and start-up costs aggregating approximately $1.3 million; (v) to pay certain financing costs aggregating approximately $2 million; and (vi) to fund the termination payment, if any, under the two interest rate hedging agreements.

Applicants propose that Project Company issue the First Mortgage Bonds in one or more series on or before December 31, 1995. The First Mortgage Bonds will be issued pursuant to any indenture (''Indenture'') among Project Company, Mobile Energy, as guarantor, and First Union National Bank of Georgia, as trustee (''Trustee''). The bonds will have final maturities of from 10 to 22 years from financial closing and a weighted average life of from 12 to 15 years; will bear interest at a fixed rate to be determined on or before the date of financial closing that will not exceed the sum of the yield to maturity of an actively traded U.S. Treasury bond with a maturity equal to the weighted average life of the First Mortgage Bonds, plus 3-¾%; and may not provide for optional redemption prior to final maturity. Project Company's obligations under the First Mortgage Bonds will be unconditionally guaranteed by Mobile Energy.

It is stated that the First Mortgage Bonds will be sold to a group of underwriters to be led by Goldman, Sachs & Co. pursuant to an Underwriting Agreement and reoffered by such underwriters in part directly to the public and in part to certain securities dealers. It is anticipated that the First Mortgage Bonds will be rated ''investment grade'' by one or more of the nationally recognized independent rating agencies.

Applicants alternatively propose that the First Mortgage Bonds may be sold pursuant to a bond purchase agreement to one or more institutional purchasers in an offering that is intended to qualify for an exemption from registration under the Securities Act, or pursuant to an underwriting agreement with one or more underwriters for resale to qualified institutional buyers pursuant to rule 144A of the Securities Act. If the First Mortgage Bonds are not sold in a registered public offering, the terms of the bond purchase or underwriting agreement may include registration rights.

Applicants also propose that Project Company enter into agreements with the Board for the issuance of a new series of Tax-Exempt Bonds, subject to all other terms and conditions set forth in the December 1994 Order.

In addition, it is proposed that Project Company enter into a working capital facility (''Working Capital Facility'') with one or more commercial banks or other institutional lenders, pursuant to which Project Company may make borrowings from time to time through 2019 in an aggregate principal amount of up to $15 million at any time outstanding, as such amount may be escalated for inflation.

Borrowings under the Working Capital Facility generally will be used by Project Company to pay for operations and maintenance costs and other routine expenses incurred by Project Company. Each loan under the Working Capital Facility will have a maturity date no later than 90 days after the date of borrowing, and no more than $5 million of such loans may be scheduled to mature during any 30-day period. Under the terms of the Working Capital Facility, Project Company will be required to repay all amounts advanced so that no amounts are outstanding thereunder once during each fiscal year (other than 1995) for a period of at least five consecutive days.

Authorization is requested for either Southern or Project Company to enter into a dedicated revolving credit facility (''Major Maintenance Facility'') with one or more commercial banks or other institutional lenders to fund certain major maintenance reserve obligations of Project Company. Borrowings at any one time outstanding under the Major Maintenance Facility will not exceed $13 million.

Southern and Mobile Energy also propose to modify the terms of the Interim Note to be assumed by Project Company, in order to extend its maturity to December 31, 1995, and to provide for the payment of interest from January 1, 1995 to the date of payment at a rate equal to the lesser of (i) Southern's effective cost of borrowing and (ii) the prime commercial lending rate in effect from time to time at a commercial bank designated by Southern, plus 3%.

Under two interest rate hedging agreements executed following the acquisition closing (''Swaps''), Mobile Energy ''locked in'' base fixed rates with respect to notional amounts of $224 million, effective May 1, 1995, and $85 million, effective July 1, 1995. Since the acquisition closing, comparable base rates have declined markedly, with the result that there would currently be a cost associated with reversing, or terminating, the Swaps. That potential cost, or the cash impact, of reversing the Swaps will be based on the comparable base rates in effect on the dates on which the Swaps are in fact reversed, which will be the same date or dates on which the rates on the First Mortgage Bonds and new series of Tax-Exempt Bonds are fixed.

Based on the notional amounts of the Swaps and other relevant factors, the cash impact of a 100 basis point decline in the applicable base rates would be approximately $25 million. By way of illustration, on June 2, 1995, the comparable base rate for the Swaps was approximately 170 basis points lower than the base rate on December 19, 1994, implying a cost (or cash impact)

of terminating the Swaps of about $45 million. If comparable base rates were to experience a further decline of an additional 200 basis points, the termination payment would be approximately $110 million.

Southern proposes to provide up to $95 million in guaranties on behalf of Mobile Energy and/or Project Company in connection with the sale of the First Mortgage Bonds and other forms of credit support (collectively, ''Credit Support''), provided that the amount thereof at any time outstanding, when added to Southern's equity investment in Mobile Energy, shall at no time exceed $135 million.

Credit Support may take a variety of forms, including a parent guaranty of indebtedness to third parties, a capital infusion or similar agreement under which cash calls from Southern may be made for certain defined purposes, or an agreement to indemnify or reimburse commercial banks or other third parties in connection with commercial letters of credit or other forms of commercially available credit enhancement that Mobile Energy or Project Company may require.

Southern proposes to negotiate the terms of Credit Support and any advances related thereto on a case-by-case basis. Subject to the foregoing, Southern proposes that any advance to or on behalf of Mobile Energy or Project Company that is structured as a loan may be unsecured and fully subordinated to the claims of other creditors of Mobile Energy or Project Company, as the case may be, and that it may bear interest at a rate equal to the lesser of (i) Southern's effective cost of borrowing and (ii) the prime commercial lending rate at money center bank designated by Southern, plus 3%. Southern further proposes that, at its option, any loan to Mobile Energy or Project Company may be converted to a capital contribution.

Southern may provide Credit Support in lieu of certain cash funded major maintenance reserves which Project Company is required to establish. Credit Support for this purpose will be funded from borrowings under the Major Maintenance Facility, or by Southern guaranties of borrowings by Project Company under the Major Maintenance Facility. It is proposed that notes issued under the Major Maintenance Facility may have maturities not later than seven years after the date of issuance.

Notes issued under the Working Capital Facility and Major Maintenance Facility may bear interest at a rate or rates based on various interest rate options available to Project Company and Southern, which in no case would be greater than the sum of the reference rate for the interest rate option selected by Project Company or Southern, as the case may be, plus the applicable spread, as follows:

Reference rate	Applicable spread (percent)
London Interbank Offered Rate	1½
Adjusted Base Rate	1

The Adjusted Base Rate will equal the greater of (i) the Federal Funds Rate, plus ½%, and (ii) the lender's publicly announced reference rate.

It is stated that Project Company and Southern may be required under the terms of either the Working Capital Facility or the Major Maintenance Facility to pay a commitment fee based on the unutilized portion of any lender's commitment and/or maintain compensating balances. The effective cost of borrowing under either of the foregoing interest rate options would be increased by no more than .625%.

The obligations of Project Company to make payments on the First Mortgage Bonds, the new series of Tax-Exempt Bonds and the Working Capital Facility (collectively, ''Senior Secured Debt'') will be secured ratably by a lien on and security interest in substantially all of the real and personal property interests of Project Company, subject to the priority of the lien of the Working Capital Provider on earned receivables (i.e., revenues from the sale of electricity, steam and liquor processing services to the Mill Owners) and proceeds from the sale of the Energy Complex fuel inventory. The First Mortgage Bonds and Tax-Exempt Bonds will also be secured by certain reserves required to be maintained under the terms of the First Mortgage Bond and Tax-Exempt Bond indentures and/or by credit Supports. Except for the guaranty provided by Mobile Energy with respect to the First Mortgage Bonds, the obligation of Project Company to make payments on the Senior Secured Debt will be secured solely by the assets of Project Company. Neither Southern nor Southern Electric nor any associate company (other than Project Company and Mobile Energy) will have any obligation with respect to the Senior Secured Debt of Project Company, except as may be expressly provided under the terms of any Credit Support provided by Southern.

Project Company and Mobile Energy propose to make cash distributions consisting, in part, of a return of capital to the extent permitted under Alabama law. Applicants project that cash distributions by Project Company and Mobile Energy will be made in some years in amounts exceeding book earnings.

Central Ohio Coal Company, et al. (70–8611)

Central Ohio Coal Company (''COCCO''), Southern Ohio Coal Company (''SOCCO'') and Windsor Coal Company (''WCCO''), each located at 1 Riverside Plaza, Columbus, Ohio 25327 and each a nonutility subsidiary of Ohio Power Company (''Ohio Power''), a public utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration under sections 6(a), 7, and 12 (c) of the Act and rule 46 thereunder.

COCCO proposes to pay to Ohio Power periodic dividends on common stock and a return of capital in amounts aggregating $19,961,687. To pay these dividends and return of capital, COCCO proposes to amend its Amended Articles of Incorporation to (1) reduce the par value of its authorized common shares to $0.10 per share, (2) change each of its outstanding common shares, par value of $100.00 per share, into a common share, par value $0.10 per share, and (3) reduce the stated capital of its common shares from $6.9 million to $6,900.

SOCCO intends to enter into negotiations for the lease financing of certain existing facilities, namely, a coal preparation plant, intermine coal conveyor and overland coal conveyor (the ''SOCCO Plant'') with a financial institution (the ''Lessor''). SOCCO anticipates that the Lessor will pay SOCCO up to $50 million for the SOCCO Plant. With this amount, and $18 million of internally generated funds which are projected to be available in excess of its needs, SOCCO proposes to pay up to $68 million as one or more dividends on SOCCO's common stock out of its capital surplus.

WCCO also intends to enter into negotiations for the lease financing of certain existing facilities, namely, a coal preparation plant, river loading terminal and overland coal conveyor (the ''WCCO Plant'') to the Lessor. WCCO anticipates that the Lessor will pay WCCO up to $11 million for the WCCO Plant. With this amount, and internally generated funds projected by WCCO to be available in excess of its own needs, WCCO proposes to pay up to $11,048,356 as a return of capital and as one or more dividends on WCCO's common stock out of its capital surplus.

In conjunction with the payment of these dividends and return of capital,

WCCO proposes to reduce the stated capital of outstanding stock. Specifically, WCCO proposes to amend its Amended Articles of Incorporation to (1) reduce the par value of its authorized common shares from $100 per share to $0.10 per share, (2) change each of its outstanding common shares, par value of $100.00 per share, into a common share, par value $0.10 per share, and (3) reduce the stated capital of its common shares from $406,400 to $406.40.

In accordance with the Commission's order dated December 10, 1982, (HCAR No. 22770), Ohio Power may earn up to a specified rate of return on its capital contributions to COCCO, SOCCO and WCCO. Applicants state that, if the Commission authorizes COCCO, SOCCO and WCCO to pay the requested dividends and, in the case of each of COCCO and WCCO, reduce the par value of its common stock, Ohio Power's total capital investment in COCCO will be reduced by the amount of such payments. This reduction in Ohio Power's capital surplus investment will remove from Ohio Power's cost of coal the return associated with the portion of its capital investment repaid.

Consolidated Natural Gas Company et al. (70–8631)

Consolidated Natural Gas Company (''Consolidated''), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, and CNG Energy Services Corporation (''CNG Energy''), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, a nonutility subsidiary of Consolidated, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 16 and 45 thereunder. Consolidated and CNG Energy propose to enter into a series of transactions from time to time through December 31, 2020 (except with respect to the guarantee authorization described below, which expires December 31, 1998), that will permit them to participate in the business of buying and selling natural gas and electric power, including in connection with arbitrage transactions, principally in wholesale energy markets.

The applicants propose that CNG Energy raise up to $10,000,000 by selling shares of its common stock, $1,000 par value, to Consolidated, receiving open account advances or long-term loans from Consolidated, or any combination of the foregoing. Open account advances and long-term loans to CNG Energy will have the same effective terms and interest rates as related borrowings of Consolidated. Consolidated proposes to obtain the funds required for these transactions through internal cash generation, issuance of long-term securities, borrowings under credit agreements or other sources subsequently approved by the Commission.

Open account advances from Consolidated to CNG Energy will mature no later than one year from the date of the first advance and bear interest at the same effective rate as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings (or, if no such borrowings are outstanding, at a rate based on the federal funds effective rate of interest). Loans from Consolidated to CNG Energy will be evidenced by long-term, non-negotiable, book-entry notes, will mature over a period of time not in excess of thirty years from issuance and will bear interest at a rate equal to Consolidated's cost of funds for comparable borrowings (or, if Consolidated had no recent comparable borrowings, at a rate tied to the published Salomon Brothers indicative rate for comparable debt issuances).

CNG Energy also proposes to organize a new subsidiary, CNG Energy Arbitrage Corporation (''CNGEA''), which will be incorporated under the laws of the State of Delaware with an authorized equity capitalization of $10,000,000, consisting of 1,000 shares of common stock with a par value of $10,000 per share. CNG Energy proposes to use not more than $10,000,000 of proceeds from its financing transactions with Consolidated to purchase shares of, or make open-account advances or long-term loans to, CNGEA, on the same terms as the related financing from Consolidated. Initially, it is expected that CNGEA will sell, and CNG Energy will acquire, 300 shares of common stock for $3,000,000.

CNGEA will acquire a one-third general partnership interest in Energy Alliance Partnership (''Energy Alliance''), a partnership to be formed under the laws of the State of Delaware. The applicants propose that CNGEA invest not more than $10,000,000 in Energy Alliance, for the acquisition of its general partnership interest and for further equity contributions. The other partners in Energy Alliance will be Noverco Energy Services (U.S.) Inc., a wholly-owned subsidiary of Noverco Inc., a Canadian public-utility holding company whose subsidiaries engage in the gas utility business and related businesses, and H.Q. Energy Services (U.S.) Inc., a wholly-owned indirect subsidiary of Hydro-Quebec, a Canadian electric utility company.

The business of Energy Alliance will be to supply, sell, purchase, market, broker or otherwise trade electricity or fuel, to provide electricity or fuel management services, and to carry on activities, or perform services, related to the foregoing, including in connection with arbitrage transactions. Energy Alliance will initially conduct its activities generally in the wholesale energy markets in the northeastern and middle-Atlantic United States. Energy Alliance intends to use risk-reduction methods, such as market hedging tools, to limit financial risks.

The applicants state that fundamental changes in the energy industry have led to an increasingly integrated and competitive energy market, in which marketers are dealing in interchangeable units of energy rather than sales of natural gas or electricity. Consolidated and CNG Energy seek to enter into the proposed transactions to participate in this market. The applicants believe that these activities are closely related to the core energy business of the Consolidated system.

Energy Alliance may engage in energy transactions with companies in the Consolidated holding company system, including utility companies, on the same market terms that would be available to its nonaffiliate customers. Energy Alliance may also contract with any of its partners, including CNG Energy, or their affiliates for services, at charges that will be made on the basis of salary plus fringe benefits for use of personnel and direct out-of-pocket expenses for other items.

In addition to providing financing to CNGEA indirectly through CNG Energy, Consolidated also proposes to enter into an undertaking agreement under which it will commit to provide up to $3,000,000 to CNGEA, as necessary to permit CNGEA to fulfill its obligations respecting its capital contributions under the Energy Alliance partnership agreement. Consolidated also proposes to guarantee, either directly or through CNGEA, the fuel and power transactions of Energy Alliance. These guarantees would be part of, and subject to the same overall $750,000,000 limitation in, the current authorization of guarantees relating to the obligations of CNG Energy (Holding Co. Act Release No. 25926, November 16, 1993). This guarantee authorization expires December 31, 1998.

The applicants also request that Energy Alliance and each of its affiliates (other than companies in the Consolidated system) be deemed exempt under rule 16 from all obligations imposed by the Holding Company Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14748 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21126; No. 812–9372]

PHL Variable Insurance Company, et al.

June 9, 1995.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: PHL Variable Insurance Company (''PHLV''), PHL Variable Accumulation Account (the ''Account''), and Phoenix Equity Planning Corporation (''Phoenix Equity'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Account in connection with the offer and sale of certain variable annuity contracts (''Existing Contracts''), and any annuity contracts that are similar in all material respects to the Existing Contracts (''Future Contracts,'' together with Existing Contracts, the ''Contracts''), which may be sold in the future by the Account, or from the assets of any other separate account (''Future Accounts,'' together with the Account, the ''Accounts'') established in the future by PHLV in connection with the issuance of Future Contracts.

FILING DATE: The application was filed on December 19, 1994, and amended on May 12, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 5, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115, Attention: Patricia O. McLaughlin, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. PHLV is a corporation organized under the laws of the state of Connecticut. On May 31, 1994, Phoenix Home Life Mutual Insurance Company (''Phoenix Home Life''), a New York domiciled insurer, through its wholly-owned subsidiary, PM Holdings Inc., a Connecticut corporation, acquired all of the issued and outstanding stock of PHLV. PHLV is currently licensed to issue variable annuity contracts in 26 states and the District of Columbia.

2. The Account is a separate investment account established by PHLV for the purpose of investing purchase payments received under the Existing Contracts. The Account is a unit investment trust which has filed a registration statement on Form N–4 under the Securities Act of 1933 to register the Existing Contracts.

3. The Account presently consists of seven subaccounts (''Subaccounts''), each of which currently invests in a corresponding series of The Phoenix Edge Series Fund and which may, in the future, invest in any other registered open-end management investment company funding variable annuity or variable life insurance contracts. Contract owners may allocate accumulation value to any one or more of the Subaccounts or to the general account of PHLV (the ''Guaranteed Interest Account''), provided that prescribed minimum purchase payment requirements are met. PHLV may issue Future Contracts through the Account and through Future Accounts.

4. Phoenix Equity, an indirect wholly-owned subsidiary of Phoenix Home Life, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 (the ''Exchange Act'') and is a member of the National Association of Securities Dealers. Phoenix Equity is the principal underwriter for the Existing Contracts. The principal underwriter for Future Contracts may be any broker-dealer registered as a broker-dealer pursuant to the Exchange Act and wholly-owned, directly or indirectly, by Phoenix Home Life.

5. The Phoenix Edge Series Fund is a diversified open-end management investment company which consists of various investment series or portfolios (collectively, ''Portfolios'') each with different investment objectives and policies. Shares of the Portfolios also are offered to other separate accounts of PHLV, Phoenix Home Life or of other insurance companies offering variable annuity or variable life insurance contracts.

6. The Existing Contracts are flexible premium variable annuity contracts offered for use by retirement plans which qualify for special federal income tax treatment under the Internal Revenue Code or by any other purchasers for whom they may be a suitable investment.

7. The Existing Contracts provide for minimum initial purchase payments and permit additional minimum purchase payments and periodic payments, subject to certain limitations. The Contracts provide for the accumulation of values on a variable basis determined by the investment experience of the Subaccounts to which the Contract owner allocates payments.

8. Prior to the maturity date, amounts held under Contracts may be transferred among the Subaccounts and the Guaranteed Interest Account. PHLV currently makes no charge for transfers among the Subaccounts, but reserves the right to assess a transfer fee, guaranteed never to exceed $10 per transfer, after the first two transfers in each Contract year to offset administrative expenses. Currently, unlimited transfers are permitted, but PHLV reserves the right to limit the number of transfers each Contract year.

9. The Contracts also provide for the payment of a death benefit. If the Contract owner is the Annuitant and dies prior to the Contract's maturity date, and there is no surviving joint owner, a death benefit calculated according to the death benefit formula will be paid to the Contract owner's beneficiary. If the Contract owner is not the Annuitant and dies prior to the maturity date, and there is no surviving joint owner, a death benefit equal to the Contract's cash surrender value (contract value less any applicable sales charge) will be paid to the Contract owner's beneficiary. If the Contract owner and the Annuitant are not the

same person and the Annuitant dies prior to the maturity date, the contingent Annuitant becomes the Annuitant. If there is no contingent Annuitant, a death benefit calculated according to the death benefit formula will be paid to the Annuitant's beneficiary.

10. Pursuant to the death benefit formula, if the death occurred prior to the Annuitant's eighty-fifth birthday and during the first seven Contract years, the death benefit payment would be equal to the greater of: (a) The sum of all purchase payments made under the Contract less any prior partial withdrawals; or (b) the Contract value.

11. If the death occurs prior to the Annuitant eighty-fifth birthday and during Contract years 8 through 14 (or during any subsequent seven year period), the death benefit payment would be equal to the greater of: (a) The death benefit that would have been payable at the end of the immediately preceding seven year period, plus any purchase payments made and less any partial withdrawals since such date; or (b) the Contract value. After the Annuitant's eighty-fifth birthday, the death benefit is the Contract value next determined following receipt of a certified copy of the death certificate by PHLV. If the Contract owner and the Annuitant are not the same and the Contract owner dies prior to the maturity date and there is no surviving joint owner, upon receipt of due proof of death PHLV will fully surrender the Contract and pay the cash surrender value (Contract value less any applicable sales charge) to the Contract owner's beneficiary.

12. Various fees and expenses are deducted under the Contracts. Prior to maturity of a Contract, PHLV charges $35 each year for administrative and related expenses (''Contract Fee''). This charge is waived for Contracts with an accumulation value on the last Contract anniversary date of $50,000 or more. PHLV also makes a daily charge to the Subaccounts equal on an annual basis to 0.125% of the current value of the Subaccounts (''Administrative Service Charge''). The Administrative Service Charge is designed to cover actual administrative expenses which exceed the revenue from the Contract Fee.

13. Applicants represent that the Contract Fee and the Administrative Service Charge are guaranteed for the duration of the Contract and will be deducted in reliance upon and in conformity with all of the requirements of Rule 26a–1 under the 1940 Act.

14. PHLV will pay any premium tax due and will then deduct any premium tax from Contract value upon the earlier of partial withdrawal, surrender of the Contract, maturity date or payment of death proceeds.

15. No front-end sales charges are deducted from premium payments under the Contracts. The Contracts assess a contingent deferred sales charge (''CDSC'') which may be taken from proceeds of withdrawals from, or complete surrender of, the Contracts if assets are not held under the Contract for a specified period of time. No sales charge is taken after the annuity phase of the Contract has begun. Any sales charge is applied on a first-in, first-out basis. With respect to withdrawals or surrenders during the first year a Contract is in existence, the deduction applies against the total amount withdrawn. After the first year of a Contract, and prior to its maturity date, a withdrawal of up to 10% of the amount held under the Contract as of the previous Contract anniversary may be made each year without imposition of a withdrawal or surrender sales charge, subject to certain restrictions described in the Contract.

16. The deduction for sales charges, expressed as a percentage of the amount redeemed in excess of the 10% allowable amount, is as follows:

Age of deposit in years	CDSC as percentage of amount withdrawn
0	7
1	6
2	5
3	4
4	3
5	2
6	1
7 and over	0

There is no sales charge assessed if the Contract owner or the Annuitant dies before the Contract maturity date. The total deferred sales charges on a Contract will never exceed 9% of the total purchase payments, and the applicable level of sales charge will not be changed with respect to outstanding Contracts. Sales charges imposed in connection with partial surrenders will be deducted from the Subaccounts and the Guaranteed Interest Account on a pro-rata basis.

17. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the CDSC. PHLV believes that the CDSC will not necessarily be sufficient to pay the cost of distributing the Contracts. If the CDSC is unsufficient to cover such expenses, the deficiency will be met from the general account assets of PHLV, which may include amounts derived from the charge for mortality and expenses risks, discussed below.

18. A daily charge equal to an effective annual rate of 1.25% of the net asset value of the Accounts will be imposed to compensate PHLV for bearing certain mortality and expense risks in connection with the Contracts. Of this amount, 0.85% is allocable to mortality risks and 0.40% is allocable to expense risks. The mortality and expense risk charge is guaranteed never to exceed 1.25%.

19. The mortality risk arises from PHLV's (1) guarantee that it will make annuity payments, in accordance with annuity rate provisions established at the time a Contract is issued for the life of the annuitant or in accordance with the annuity option selected, no matter how long the annuitant or other payee lives and no matter how long all annuitants as a class live, and (2) death benefit guarantees under the Contracts.

20. The expense risk borne by PHLV is the risk that the charges for administrative expenses, which are guaranteed for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts.

21. If the mortality and expense risk charges deducted are insufficient to cover the actual cost of the mortality and expense risk, PHLV will bear the loss. Conversely, if the mortality and expense risk charges deducted prove more than sufficient, the excess will be added to PHLV's surplus and will be used for any lawful purpose, including offsetting the costs of distributing the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Accounts in connection with the issue and sale of the Contracts.

2. Pursuant to Section 6(c) of the 1940 Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and are held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a charter normally performed by the bank itself.

4. Applicants submit that their request for exemptive relief for deduction of the mortality and expense risk charge from the assets of the Accounts in connection with the issue and sale of the Contracts would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the existence of charge level or annuity-rate guarantees, and the markets in which the Existing Contracts are offered. Applicants represent that Phoenix Home Life will maintain at the offices of its actuarial department, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants represent that they will, prior to offering Future Contracts, conclude that the mortality and expense risk charges under such contracts (which cannot exceed in amount the mortality and risk charges under the Existing Contracts) will be within the range of industry practice for comparative contracts. PHLV will maintain at the offices of its actuarial department, and make available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of the comparative survey resulting in that conclusion.

7. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Existing contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. PHLV has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the owners of Existing Contracts. The basis for that conclusion is set forth in a memorandum which will be maintained by PHLV at the offices of its actuarial department and will be made available to the Commission.

8. Applicants acknowledge that, if a profit is realized from a mortality and expense risk charge under Future Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by a CDSC. Applicants represent that they will, prior to offering Future Contracts, conclude that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Future Accounts and the owners of such Future Contracts. The basis for that conclusion will be set forth in a memorandum which will be maintained by PHLV at the offices of its actuarial department and will be made available to the Commission.

9. Applicants also represent that the Accounts will invest only in underlying funds that have undertaken to have a board of directors, a majority of whom are not interested persons of any such funds within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14747 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21127; 811–6286]

BITS Trust; Notice of Application

June 9, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANT: BITS Trust.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on May 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 400 South LaSalle Street, Chicago, Illinois 60605.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered unit investment trust, filed its notification of

registration on Form N–8A on March 8, 1991. Applicant never filed a registration statement under section 8(b) of the 1940 Act or under the Securities Act of 1933.

2. On March 11, 1991, Applicant filed an application under section 6(c) of the 1940 Act for an exemption from various provisions thereof that were necessary in light of its organizational structure. Applicant stated that it intended to organize separate trusts in series form and to register units of each trust series for listing and trading on the Chicago Board Options Exchange, Inc. The stated purpose for this type of investment product was to make available to investors an instrument that closely tracked the underlying component shares of a stock index and traded like a share of common stock. The Standard & Poor's 500 Composite Price Index was to serve as the underlying index for the first trust series. By letter dated November 19, 1991, the SEC granted Applicant's request for withdrawal of the application.

3. Applicant has never issued or sold any securities and has no security holders. Applicant has never engaged, and does not propose to engage, in business activities of any kind.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14746 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35832; File No. SR–CHX–95–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Technical Correction of Its Rule Regarding Letters of Guarantee

June 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 30, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 9 of Article XI by redesignating one of the two rules that is currently designated as Article XI, Rule 9 as Article XI, Rule 10.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In SR–CHX–95–03, the CHX codified into CHX Article XI, Rule 9 a requirement that non self-clearing brokers procure a letter of guaranty prior to trading.[1] However, the codification inadvertently misnumbered this rule as Article XI, Rule 9.[2] The purpose of the proposed change is to correct this inadvertent error by renumbering the rule requiring non self-clearing brokers to procure a letter of guaranty prior to trading as Rule 10 of Article XI.

The proposed rule change is consistent with Section 6(b)(5) of the Act because it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

[1] Securities Exchange Act Release No. 35550 (Mar. 30, 1995), 60 FR 17376.

[2] A preexisting Article XI, Rule 9 was approved January 27, 1995. *See* Securities Exchange Act Release No. 35287 (Jan. 27, 1995), 60 FR 6743 (approving SR–CHX–94–28).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Chicago Stock Exchange. All submissions should refer to File No. SR–CHX–95–13 and should be submitted by July 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14745 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35835; File No. SR–Amex–95–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Indexed Term Notes.

June 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide (''Guide''), Indexed Term Notes (''Notes''), the return on which will be based in whole or in part on changes in the value of ten equity securities (''Index''). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under Section 107 of the Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[1] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on a static index composed of ten actively-traded equity securities. The securities to be included in the Index will be those selected by the issuer of the Notes, Lehman Brothers, Inc. (''Lehman''), on or about July 1, 1995, as their selections of ten securities that they believe will outperform the stock market during the succeeding twelve months.[2] The securities in the Index will be selected by Lehman based on its market research and investment strategy, and will be announced at or as close as possible to the time of the offering of the Notes.

The Notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the Guide.[3] Although the specific maturity date will not be established until immediately prior to the time of the offering, the Notes will provide for maturity within approximately one year from the date of issue. The Notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index. In addition, the Notes may feature a ''cap'' on the maximum amount to be paid either periodically or at maturity. The Notes, however, will provide that at maturity, holders will receive not less than 90% of the initial issue price. Consistent with other structured products listed by the Amex, the Amex represents that prior to the commencement of listing and trading of the Notes, the Exchange will distribute a circular to its membership providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

Eligibility Standards for Index Components

The Exchange represents that each of the components in the Index will meet the following criteria at the time of the issuance of the Notes: (1) a minimum market capitalization of $75 million, except that one component may have a market capitalization of not less than $50 million; (2) trading volume in each of the six months prior to the offering of the Notes of not less than one million shares, except that one of the component securities may have a trading volume in each of the six months prior to the offering of the Notes of not less than 500,000 shares; (3) at least nine of the component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915;[4] and (4) all components of the Index will be listed on the Amex or the New York Stock Exchange, or will be National Market securities traded though Nasdaq.[5]

Index Calculation

The Index will be calculated using an ''equal dollar-weighting'' methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by the issuer representing an investment of $10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the time that the Notes are priced for issuance.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may

[1] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[2] Lehman refers to these ten securities as the ''Lehman 10 Uncommon Values in Common Stocks.'' Lehman has generated similar lists on an annual basis for many years. Telephone conversation between Michael Bickford, Vice President, Capital Markets Group, Amex, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on June 7, 1995.

[3] Specifically, the Notes must have: (1) a minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuer of the Notes, Lehman, must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer may have either: (1) assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million.

[4] For these purposes, the Commission notes that in addition to the other requirements in Amex Rule 915, any security issued by a non-U.S. company that is included in the Index must also satisfy the requirements set forth in Amex Rule 915, Commentary .03. A non-U.S. company is defined as any company formed or incorporated outside of the United States.

[5] The Commission notes that all components of the Index will be required to be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.

also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer, or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component security into another class of security, the termination of a depositary receipt program, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[6] In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

The value of the Index will be calculated continuously by the Amex and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Ampex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. Sr–Amex–95–21 and should be submitted by July 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[6] Lehman will not attempt to find a replacement stock or compensate for the extinction of a security due to bankruptcy or a similar event.

[7] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35837; File No. SR–NYSE–94–45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Member Organization Facilitation of a Customer Stock or Program Orders

June 12, 1995.

I. Introduction

On December 6, 1995, the New Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding member organization facilitation of customer stock or program orders.[3] On January 11, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 35230 (January 13, 1995), 69 FR 4453 (January 23, 1995). One comment letter was received on the proposal.[5]

II. Description of Proposal

The NYSE proposal consists of an Information Memorandum to advise Exchange members of certain activities that the Exchange will consider inconsistent with just and equitable principles of trade. Specifically, the Memorandum discusses facilitation of customer block orders at the close, trading based upon information of imminent customer transactions, and procedures to review facilitation activities for compliance with Exchange rules and federal securities laws.

First, the Memorandum discusses a member's responsibilities when positioning itself to facilitate a customer transaction to be executed after the close at the closing price.[6] The Memorandum states that a member should not trade for its own account ''near the close'' if it intends to execute an ''at the close'' order[7] that reasonably can be expected to affect the closing price of the security. Whether or not the purchase will be deemed near the close will depend upon the degree of risk that reasonably

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] NYSE Rule 80A defines the term ''program trading'' as (1) index arbitrage or (2) any trading strategy involving the related purchase or sale of a ''basket'' or group of 15 or more stocks having a total market value of $1 million or more.

[4] *See* fax from Donald Siemer, NYSE, to Beth Stekler, SEC, dated January 11, 1995 (consisting of a revised Memorandum). The amendment made certain technical corrections to the text of the Memorandum.

[5] *See infra* note 10 and accompanying discussion.

[6] Although the Memorandum uses an example where the member has agreed to sell to a customer at the closing price, and therefore is purchasing stock before and at the close, the principles discussed in the Memorandum would apply equally to the situation where the member agrees to purchase stock from the customer at the closing price and therefore sells the security before and at the close. *See* letter from James Buck, Senior Vice President and Secretary, NYSE, to Brandon Becker, Director, Division of Market Regulation, SEC, dated April 19, 1995 (''NYSE Letter'').

[7] An ''at the close order'' is a market order which is to be executed in its entirety at the closing price on the Exchange. If the order is not executed at the closing price, it is treated as cancelled. *See* NYSE Rule 13.

could be attributed to the position established by the trade versus the reasonably anticipated impact the trade at the close will have on the closing price. Generally, however, trades after 3:40 p.m. will be considered executed ''near the close.''[8]

Second, the Memorandum states that if a member has knowledge of an imminent block order, the member should not effect any transactions in that stock with the intention of reversing the position subsequently by participating on the contra-side of the block transaction. The Memorandum further provides that a person should not disclose to any other person trading strategies or customers' orders so that the person may take advantage of the information for his or her personal benefit or for the benefit of the member organization.[9]

Finally, the Memorandum reminds members that they are required to establish and maintain procedures reasonably designed to review facilitation activities for compliance with Exchange rules and federal securities laws. It also states that members must ensure that trading strategies engaged in by their proprietary traders to facilitate customers' orders have an economic basis and are not engaged in to mark the close or to mark the value of a position, and that before any at the close customer orders are transmitted to the Floor of the Exchange, members accepting such orders must exercise due diligence to learn the essential facts relative to these orders.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change on behalf of six NYSE-member firms (the ''Comment Letter'').[10] The issues raised therein and the NYSE response are discussed below.[11]

The Comment Letter noted that, because the rule change would preclude NYSE members from effecting proprietary transactions for the 20 minutes prior to the close, the proposal would result in additional risk for such members when facilitating customer block transactions at the closing price. As a result of this added risk exposure, it was argued that the costs to customers in executing such transactions would increase. In its response, the NYSE recognized that the proposal could produce additional risk for proprietary facilitation, but stated that the transactions after 3:40 p.m. bear *de minimis* risk because they are made in close proximity to a trade at the close that most likely would have a profitable impact on the prior transactions. In addition, the Exchange asserted that the rule change is consistent with the existing prohibitions against frontrunning, and that the 3:40 p.m. cut-off time was included to avoid confusion over what transactions generally would be considered ''near the close.''

The Comment Letter stated that the proposed rule appears to remove the Exchange's burden of proving manipulative intent on the part of a member that entered an order after 3:40 p.m., without ''immunizing'' transactions executed before that time. The Comment Letter asserted that because transactions occurring before 3:40 p.m. could still be deemed ''near the close,'' the proposed rule change provides the Exchange with a high degree of prosecutorial discretion, making the proposal inconsistent with Section 6(b) (6) and (7) of the Act.[12] Additionally, the Comment Letter stated that predicating the prohibition against proprietary orders upon whether a member entered a market at the close order that ''can reasonably be expected to impact the closing price'' would require firms to predict the impact of future trades. The NYSE responded that it believes it is appropriate to use the proposed standard because it provides flexibility for judgmental errors. The NYSE also noted that this is the same standard used in frontrunning cases to assess compliance with just and equitable principles of trade.

Finally, the Comment Letter pointed out that the NYSE has not provided empirical support for restricting proprietary trading near the close. It also asserted that the transactions that would be prohibited represent actual customer demand, as opposed to orders by firms intended to take advantage of customer orders. The Comment Letter suggested that instead of the proposed interpretation, the Exchange should impose a requirement that members make full disclosure to their customers before undertaking transactions of this kind. In response, the Exchange stated that the empirical basis for its belief is demonstrated in patterns of trading that the Exchange has reviewed. The Exchange also asserted that disclosure to customers, even when the proprietary trade has a minimal impact, would be ineffective. According to the NYSE, the transactions in question may be effected due to the probability of immediate profitability, and they would, in any event, be based on an unfair informational advantage over other market participants. In addition, the NYSE asserted that, while the proprietary orders are initiated because of customer interest, those proprietary orders also would not be entered but for the knowledge of customer orders.

IV. Discussion

After careful consideration of the Comment Letter and the NYSE response thereto, the Commission has decided to approve the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) (5), (6), and (7).[13]

The Commission notes that two of the topics discussed in the Memorandum are restatements of current Exchange policy. Specifically, The Memorandum's discussion of trading based upon information of an imminent customer transaction and the requirement that members maintain procedures reasonably designed to review facilitation activities for compliance with Exchange rules and federal securities laws are consistent with Exchange Rule 476 and previous NYSE interpretations issued pursuant to that Rule.[14] The Commission continues to believe that these policies are consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative

[8] The Memorandum notes that members will not be precluded from executing customer orders on an agency basis at any time, including at or near the close. The Memorandum, however, cautions that this does not preclude the Exchange from determining that such activity might be a violation of the anti-manipulation provisions of the Act or Exchange rules. *See* 15 U.S.C. 78i(a) and j(b) (1988); NYSE Rule 476.

[9] The Memorandum notes, however, that this would not preclude a member organization from soliciting interest to trade with the contra-side of a block in the normal course of engaging in block facilitation activities.

[10] *See* letter from Roger Blanc, Willkie Farr & Gallagher, dated March 2, 1995 (representing Bear, Stearns & Co. Inc.; CS First Boston Corporation; Goldman, Sachs & Co.; Morgan Stanley & Co. Incorporated; PaineWebber Incorporated; and Saloman Brothers Inc.) (''Comment Letter'').

[11] *See* NYSE Letter, *supra* note 6. According to the NYSE, the proposed rule change was reviewed and approved by the Exchange's Upstairs Traders Advisory Committee, Institutional Trading Advisory Committee, Market Performance Committee, and Quality of Markets Committee prior to filing with the Commission.

[12] 15 U.S.C. 78f(b) (6) and (7) (1988).

[13] 15 U.S.C. 78f(b) (5), (6), and (7).

[14] *See, e.g.,* NYSE Information Memo Number 89–53 (November 27, 1989).

acts, and, in general, to protect investors and the public.

Similarly, the proposed Memorandum's description of the types of proprietary trading near the close that may, in certain circumstances, constitute a violation of just and equitable principles of trade is reasonably designed to address potential trading abuses that might occur when members are facilitating customer block or program orders. The Commission agrees with the NYSE that the conduct addressed in the Memorandum—trading with knowledge of impending large at the close orders—could prove detrimental to market integrity. The proposed guidelines for such trading near the close are consistent with long standing prohibitions against frontrunning. Moreover, the NYSE restrictions on block facilitation activities near the close are very limited in scope and should provide helpful guidance to members.

For the reasons discussed below, the Commission also believes the Comment Letter's criticisms of the proposal are adequately addressed. First, it is unnecessary for the NYSE to conduct further empirical studies before adopting this proposal. The NYSE represents that it has observed instances of block facilitation trading by its members that results in closing prices that disadvantage customers.[15] In addition, as previously mentioned, the Memorandum is an elaboration of existing prohibitions against frontrunning. Thus, the NYSE is merely providing guidance on the types of conduct that already constitute a violation of just and equitable principles of trade under its rules.

Second, the Commission does not believe that simply requiring disclosure to customers sufficiently will protect customers or preserve market integrity. As the NYSE has indicated, the conduct addressed in this proposal affects not only the facilitation member's customer, but also all other market participants. The NYSE member still would have an informational advantage over the rest of the market even after full disclosure to its customer.

Third, the Comment Letter considers the Memorandum's guidance as a blanket prohibition against certain proprietary trading after 3:40 p.m., the designated cut-off time.[16] The Memorandum, however, only restricts post-3:40 p.m. trading in limited circumstances. The Memorandum states that a member, when positioning itself to facilitate a customer transaction to be made after the close at the closing price, should not trade for its own account ''near the close'' (after 3:40 p.m.) if it intends to execute an at the close order that reasonably can be expected to impact the closing price of the security. The Memorandum does not prohibit proprietary trading after 3:40 p.m., only a limited type of proprietary trading when in possession of a form of non-public, material market information.

Fourth, the Commission does not agree with the Comment Letter's assertion that the proposed regulation of proprietary trading near the close, defined generally as after 3:40 p.m., provides the Exchange with excessive prosecutorial discretion. The 3:40 p.m. cut-off is intended to provide members with *more* guidance as to prohibited conduct under the NYSE rules. At the same time, the 3:40 p.m. cut-off is not intended to operate as a ''safe-harbor.'' The cut-off guideline provided in the Memorandum does not preclude the Exchange from determining that certain transactions before 3:40 p.m. were executed ''near the close.'' The Commission agrees with the NYSE that the standard for determining which transactions are executed ''near the close'' must be flexible and take into consideration factors unique to the market for a particular security. The Commission therefore believes the proposed standard for determining when an execution is ''near the close'' is appropriate and even though it may cover transactions effected before the designated cut-off time.

Fifth, the Comment Letter suggests that the proposed standard would relieve the Exchange from proving manipulative intent for transactions executed after 3:40 p.m. The NYSE, however, seeks to address conduct that could enable block positioners to benefit from an unreasonable informational advantage over other market participants. The Commission believes that it is reasonable for the NYSE to adopt a position to reduce the likelihood of members trading to their own advantage based on customer information. This position still requires proof that the at the close order reasonably could be expected to affect the closing price.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–94–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[15] *See* NYSE Letter, *supra* note 6.

[16] *See* Comment Letter, *supra* note 10.

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35836; File No. SR–PSE–95–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Number of Trading Posts That May Be Included as Part of Each Market Maker's Primary Appointment Zone

June 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 7, 1995, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to increase the number of trading posts that may be included as part of each market maker's primary appointment zone.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PSE Rule 6.35 currently requires each options market maker to select and maintain a primary appointment zone consisting of one or two trading posts.[2] Pursuant to Rule 6.35, Commentary .03, at least 75% of the trading activity of each market maker (measured in terms of contract volume per quarter) must be in classes of option contracts to which such market maker's primary appointment zone extends. In addition, under the new short sale rule applicable to stocks traded in the Nasdaq market, the options market maker exemption to that rule is limited to stocks underlying options in which the market maker holds an appointment.[3]

The Exchange proposes to amend Rule 6.35 in two respects: First, the maximum number of trading posts that could be included as part of each primary appointment zone would be increased from two to six. Second, the Options Appointment Committee could allow a market maker to exceed the six trading post maximum if special circumstances were to exist. Under the proposal, the largest number of issues a market maker could have within his or her primary appointment zone, in the absence of special circumstances, would be 108 (or 31% of the issues traded on the Options Floor).

The Exchange believes that the current limit of two trading posts is unduly restrictive and places the PSE's options market makers at a competitive disadvantage in relation to market makers on other options exchanges. The Exchange further believes that its proposal will allow it the flexibility to respond promptly to any need for greater market maker participation that may arise in light of recent and anticipated increases in the number of options classes traded on the floor. The Exchange also believes that its proposal, if approved, would serve to assure adequate market maker coverage of all classes traded on the floor and to enhance the ability of the Exchange to provide deep and liquid markets and to provide for competitive equality among exchanges.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

[2] PSE Rule 6.35 requires multiple posts to be contiguous, except under special circumstances.

[3] *See* PSE Rule 4.19(c)(2).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–95–11 and should be submitted by [insert date 21 days after the date of this publication].

For the Commission to by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

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[4] 17 CFR 200.30–(a)(12) (1994).

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on June 2, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Beneficiary Recontact Report—0960–0502. The information on form SSA–1588 is used by the Social Security Administration to recontact mothers, fathers or children in direct payment to determine if they are still entitled. The respondents are beneficiaries who are in the ''high risk'' area and are, therefore, most prone to overpayments.

Number of Respondents: 241,260.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 20,105 hours.

2. Child-Care Dropout Questionnaire—0960–0474. The information on form SSA–4162 is used by the Social Security Administration to determine if an applicant for disability benefits may have certain computation years excluded from the benefit computation. This will result in a higher benefit amount. The respondents are individuals applying for disability benefits.

Number of Respondents: 2,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 167 hours.

3. Representative Payee Evaluation Report—0960–0069. The information on form SSA–624 is used by the Social Security Administration to accurately account for the use of social security benefits and supplemental security income payments that representative payees receive on behalf of the

individual. The affected public is comprised of individuals who were previously sent an SSA–623.

Number of Respondents: 422,533.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 211,267 hours.

4. Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103. The information on form SSA–7163A is used by the Social Security Administration to make a determination as to whether foreign work deductions are applicable when an SSA claimant reports work on a farm outside the United States. The respondents are SSA claimants who report work on farms outside of the United States.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 1,000 hours.

5. Letter to Employer Requesting Information About Wages Earned by Beneficiary—0960–0034. The information on form SSA–L725 is used by the Social Security Administration to establish the exact amount of wages earned by a beneficiary and to determine the amount of benefit payments, if any. The respondents are employers of the beneficiaries.

Number of Respondents: 150,000.

Frequency of Response: 1.

Average Burden Per Response: 30–50 minutes.

Estimated Annual Burden: 100,000 hours.

6. Request for Address Information from Motor Vehicle Records; Request for Address Information from Employment Commissions—0960–0341. The information on forms SSA–L711 and SSA–L712 is used by the Social Security Administration to determine the current address for missing debtors. The affected public is comprised of State agencies who have entered in agreements with SSA to provide the requested information.

Number of Respondents: 3,200.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 106 hours.

7. Payment Cycling Impact Survey—0960–NEW. The information is used by the Social Security Administration to assess whether the issuance of regularly scheduled title II monthly payments significantly increases the workload in the field offices and teleservice centers during the early part of each month. The information is needed to determine whether payment cycling would be an effective tool in managing the title II workload. The respondents are the general public contacting field offices and the teleservice centers.

Number of Respondents: 26,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,167 hours.

8. Social Security Request for Information—0960–0531. The information on form SSA–6231 is used by the Social Security Administration to complete or clarify data previously provided by representative payees on forms SSA–623 or SSA–6230. The respondents will be payees who furnished incomplete or unclear information.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA, New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: June 9, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–14674 Filed 6–15–95; 8:45 am]

BILLING CODE 4190–29–P

[Social Security Ruling SSR 95–2c]

Disability—Authority of Appeals Council to Dismiss a Request for Hearing for a Reason for Which the Administrative Law Judge Could Have Dismissed the Request—Res Judicata

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95–2c. This Ruling is based on the decision of the U.S. Court of Appeals for the Sixth Circuit in *Harper* v. *Secretary of Health and Human Services,* which upheld the authority of the Appeals Council to dismiss a request for hearing for a reason the Administrative Law Judge (ALJ) could have dismissed it, even though the ALJ held a hearing and issued a decision on the merits.

This Ruling reconfirms the Appeals Council's authority to dismiss a request for hearing on the basis of administrative *res judicata.*

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security— Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.005, Special Benefits for Disabled Coal Miners; 96.006, Supplemental Security Income.)

Dated: June 6, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Sections 205(b) and 221(d) of the Social Security Act (42 U.S.C. 405(b) and 421(d)) Disability—Authority of Appeals Council to dismiss a request for hearing for a reason for which the administrative law judge could have dismissed the request—*res judicata.*

20 CFR 404.957(c)(1)

Harper v. *Secretary of Health and Human Services,* 978 F.2d 260 (6th Cir. 1992)

The claimant, who stopped working in January 1981, filed applications for

disability insurance benefits in 1981, 1982, and 1986. The Social Security Administration (SSA) denied all of these applications. In May 1987, she filed a fourth application. SSA denied this application initially and upon reconsideration, and the claimant did not request further administrative review. In June 1988, the claimant filed a fifth application which was denied initially and upon reconsideration. The claimant requested and received a hearing before an Administrative Law Judge (ALJ). The ALJ issued a decision denying her application, finding that she was not disabled through December 31, 1986, the date on which her insured status expired. The claimant filed a request for Appeals Council review. The Appeals Council granted the request, vacated the ALJ's decision, and dismissed the request for hearing on the basis of administrative *res judicata.*

The Appeals Council concluded that under the doctrine of administrative *res judicata,* 20 CFR 404.957(c)(1), the determination denying the claimant's fourth application was dispositive of her subsequent claim.

The claimant then filed a civil action. The district court remanded the case to the Secretary to determine whether the determination on the claimant's fourth application should have been reopened pursuant to 20 CFR 404.988(a). The Appeals Council found no basis for reopening that determination, and again determined that the request for hearing on the fifth application should be dismissed on the basis of *res judicata.* The case was returned to the district court which upheld the action of the Appeals Council. The claimant then appealed to the United States Court of Appeals for the Sixth Circuit. In her appeal, the claimant maintained that the ALJ's decision to hold a hearing and issue a decision on the merits was not subject to review by the Appeals Council. She further argued that even if the ALJ erred in holding the hearing, the Appeals Council could not dismiss the request for hearing on the basis of *res judicata* after the ALJ heard the case on the merits.

The Court of Appeals stated that the ALJ's action in holding a hearing and issuing a decision appeared to be erroneous and that it knew of no reason why it was not within the province of the Appeals Council to correct the error. The court *held* that the Appeals Council has authority to vacate an ALJ's decision and dismiss the request for hearing on *res judicata* grounds even though the ALJ held a hearing and issued a decision on the merits.

Per Curium

This is a social security case in which the appellant filed a series of claims asserting that she had become disabled before her insured status expired. The main question before us is whether, after an administrative law judge has conducted an evidentiary hearing despite the existence of an earlier final decision denying the same claim, the Appeals Council can deny the hearing request retroactively, thereby foreclosing judicial review. The district court answered this question in the affirmative and dismissed the claimant's case. We agree with the district court's decision, and we shall affirm the dismissal.

I

The claimant, Edith Harper, held a job for a ten-year period ending in January of 1981. She has not worked since that time, and her insured status expired on December 31, 1986.

Ms. Harper filed applications for disability insurance benefits on April 7, 1981, February 8, 1982, April 22, 1986, May 19, 1987, and June 23, 1988. The first, third, and fourth applications were denied initially and upon reconsideration. The second was denied initially, and no appeal was taken from its denial. Ms. Harper did not request a hearing before an administrative law judge with respect to any of the first four applications.

After the denial upon reconsideration of her fifth claim, Ms. Harper sought and was granted a hearing before an administrative law judge. The ALJ denied the fifth claim on its merits, finding that Ms. Harper had not been disabled as of the last date on which she was insured. Ms. Harper sought review by the Appeals Council, which granted review in a letter dated March 12, 1990. In the same letter, the council alerted Ms. Harper to the possibility that her claim would be disposed of on administrative *res judicata* grounds.

On May 25, 1990, the Appeals Council vacated the decision of the ALJ and retroactively denied the request pursuant to which the ALJ had conducted the hearing. The council took the position that under the doctrine of administrative *res judicata,* the denial of Ms. Harper's fourth claim was dispositive of any subsequent claim.

Following initiation of the present suit for judicial review, the district court remanded the matter to the Appeals Council for a determination as to whether Ms. Harper's fourth application for benefits should have been reopened under 20 C.F.R. § 404.988(a). The council declined to reopen the fourth claim, finding that Ms. Harper had presented no new evidence as to her condition before December 31, 1986. The council again determined that the fifth claim was barred by the doctrine of *res judicata.* In a well reasoned opinion filed by the district court (Graham, J.) on November 18, 1991, the court then dismissed Ms. Harper's lawsuit. This appeal followed.

The first question we must address is whether the federal courts have jurisdiction. The pertinent statute, 42 U.S.C. § 405(g), provides, in relevant part, as follows:

''Any individual, after any final decision of the Secretary *made after a hearing to which he was a party,* irrespective of the amount in controversy, may obtain a review of such a decision by a civil action commenced within sixty days. * * *'' (Emphasis supplied.)

The Appeals Council determined that the final decision of the Secretary was the denial upon reconsideration of the fourth claim in 1987. The final decision of the Secretary thus appears to have been made *before* any evidentiary hearing took place, which would normally preclude judicial review. A refusal to reopen a prior application is not a final decision and may not be reviewed by the courts. *Califano* v. *Sanders,* 430 U.S. 99, 107–09, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977); *Blacha* v. *Secretary of Health and Human Services,* 927 F.2d 228 (6th Cir.1990).

Ms. Harper claimed before the district court, and she claims here, that she was deprived of property without due process of law in violation of her rights under the Fifth Amendment of the United States Constitution. As *Califano* noted, where a constitutional claim is made in conjunction with a social security benefits case, jurisdiction may attach outside the scope of 42 U.S.C. 405(g) and despite the foreclosure, in 42 U.S.C. 405(h), of general federal question jurisdiction over social security appeals. (The latter section provides that ''[n]o action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.'') The district court thus had jurisdiction to entertain Ms. Harper's constitutional claim, regardless of whether jurisdiction existed under 42 U.S.C. 405(g).

II

Ms. Harper contends, as we have said, that the action of the Appeals Council in vacating the ALJ's decision to grant a hearing on the merits and disposing of the case on *res judicata* grounds constituted a denial of due process. As a preliminary matter we note a potential stumbling block not addressed in the parties' briefs.

Under the language of the Fifth Amendment, due process protections

attach only to ''life, liberty, or property.'' Ms. Harper could not prevail on her constitutional claim, therefore, without showing that she was deprived of ''property'' without due process of law. The existence of a property interest here is far from self-evident.

''The definition of property since the 1972 [Supreme Court] decision in *Board of Regents* v. *Roth* has centered on the concept of 'entitlement.' The Court will recognize interests in government benefits as constitutional 'property' if the person can be deemed to be 'entitled' to them. Thus, the applicable federal, state or local law which governs the dispensation of the benefit must define the interest in such a way that the individual should continue to receive it under the terms of the law. This concept also seems to include a requirement that the person already has received the benefit or at least had a previously recognized claim of entitlement.'' 2 Rotunda & Nowak, Treatise on Constitutional Law § 17.5(a) at 628 (1992).

The right to due process applies to the termination of government benefits already being received, *Goldberg* v. *Kelly,* 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), but Ms. Harper has never received disability benefits. Two of our sister courts of appeals have extended *Goldberg* to applicants for government benefits that have not yet been awarded. See *Daniels* v. *Woodbury County, Iowa,* 742 F.2d 1128 (8th Cir.1984) (finding applicants for general assistance on the county level had a right to due process), and *Griffeth* v. *Detrich,* 603 F.2d 118 (9th Cir.1979), *cert. denied sub nom. Peer* v. *Griffeth,* 445 U.S. 970, 100 S.Ct. 1348, 64 L.Ed.2d 247 (1980) (finding applicants for benefits under state general assistance program had a ''legitimate expectation of entitlement'' because of mandatory language in state statute).

The Supreme Court has recognized a right to due process on the part of parole applicants who can point to a statute saying that prisoners ''shall'' be released under certain conditions, *Greenholtz* v. *Nebraska Penal Inmates,* 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979), but the Court has not determined whether applicants for monetary benefits have a similar right. See *Lyng* v. *Payne,* 476 U.S. 926, 942, 106 S.Ct. 2333, 2343, 90 L.Ed.2d 921 (1986) (''We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment''). See also *Peer* v. *Griffeth,* 445 U.S. 970, 100 S.Ct. 1348, 64 L.Ed.2d 247 (1980) (Rehnquist, J., dissenting from denial of certiorari) (''Particularly when the only [California] appellate court to consider the question has concluded that there is no protected property interest under state law, this extension of *Goldberg* v. *Kelly* * * * should receive plenary consideration by this Court''). The Rotunda and Nowak treatise comments that ''[a]lthough the Court has not resolved this issue, under the 'entitlement' principle it would appear that a person has no property interest in a benefit unless he has previously been granted it by the government.'' 2 Rotunda & Nowak, *supra* § 17.5, at 629.

This court was presented with an opportunity to adopt *Griffeth's* ''mandatory language'' rationale in *Baker* v. *Cincinnati Metropolitan Housing Authority,* 675 F.2d 836 (6th Cir.1982). There the plaintiffs sought changes in procedures followed by a housing authority in determining eligibility for a new Housing and Urban Development program. The district court relied partially on Griffeth in determining that persons who could show they met the criteria for the program were entitled to due process protection. *Baker* v. *Cincinnati Metropolitan Housing Authority,* 490 F.Supp. 520, 532 (S.D. Ohio 1980). We decided on appeal that the procedures satisfied due process, but we did not specifically address the question whether due process was constitutionally required.

In the case at bar we find it unnecessary to decide whether Ms. Harper had a ''property'' interest of which she could not be deprived without due process. Whether or not there was a property interest, Ms. Harper received all the process that would have been due under any hypothesis.

The regulations promulgated by the Secretary make it clear that an unappealed denial upon reconsideration is a final decision. 20 C.F.R. § 404.921 provides as follows:

''The reconsidered determination is binding unless—

(a) You or any other party to the reconsideration requests a hearing before an administrative law judge within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised.''

Because the denial of Ms. Harper's fourth claim upon reconsideration was not appealed or revised, and because the denial was not followed by a timely request for a hearing before an ALJ, the denial was a final decision of the Secretary that was, according to the regulation, ''binding.'' The ALJ who heard Ms. Harper's fifth claim was aware of this problem, yet he offered no explanation of his failure to give the reconsidered denial of the fourth claim the binding effect prescribed by the regulation. The ALJ's decision to treat the earlier determination as non-binding appears to have been erroneous, and we know of no reason why it was not within the province of the Appeals Council to correct the error.

In *Mullen* v. *Bowen,* 800 F.2d 535 (6th Cir.1986) (*en banc*), this court noted that the Appeals Council may review *any* determination by an ALJ that it chooses to review, whether or not there has been an application for such review.[1] See *id.* at 545, 554 (Nelson, J., concurring). The Appeals Council is empowered to consider all aspects of a decision, even if the claimant seeks review of a portion only—and the council need not give notice to the claimant of its intent to review the entire decision. *Gronda* v. *Secretary of Health & Human Services,* 856 F.2d 36, 38–39 (6th Cir.1988), cert. denied, 489 U.S. 1052, 109 S.Ct. 1312, 103 L.Ed.2d 581 (1989).[2]

Notwithstanding *Mullen,* Ms. Harper maintains that the ALJ's decision to grant a hearing was not subject to review by the Appeals Council. Even if the grant of a hearing was improvident, she suggests, the council could not set the grant aside and invoke the doctrine of *res judicata* after the ALJ had heard the claim on the merits. In cases that are almost exactly parallel to this one, however, the Courts of Appeals for the Fifth and Seventh Circuits have held that the council can reopen a decision by an ALJ to grant a hearing, and—even if a hearing has actually been held—can dismiss on *res judicata* grounds. *Ellis* v. *Schweiker,* 662 F.2d 419 (5th Cir.1981); *Johnson* v. *Sullivan,* 936 F.2d 974 (7th Cir.1991). See also *Taylor* v. *Heckler,* 765 F.2d 872, 874–77 (9th Cir.1985) (upon second application, ALJ reopened first application and found claimant disabled; Appeals Council vacated ALJ's decision and dismissed on *res judicata* grounds). We agree with these decisions, and we adopt their reasoning.

[1] Since *Mullen* was decided, the Seventh Circuit, sitting *en banc,* has reversed an earlier panel decision and come down on *Mullen's* side. See *Bauzo* v. *Bowen,* 803 F.2d 917, 921 (7th Cir.1986) (*en banc*), overruling *Scott* v. *Heckler,* 768 F.2d 172 (7th Cir.1985). Seven circuits now adhere to *Mullen's* view; only the Third Circuit remains on the other side. See *Mullen,* 800 F.2d at 539 n. 4 (citing cases, including *Powell* v. *Heckler,* 783 F.2d 396 (3rd Cir.1986)).

[2] *Gronda* forecloses any argument that the council should not have been able to bar Ms. Harper's claim on *res judicata* grounds because she had no notice that *res judicata* might be used against her. The point is moot, however, in light of the council's letter of March 12, 1990, warning Ms. Harper of its intention to dismiss her claim on the basis of *res judicata* and inviting her arguments against such action.

Poulin v. *Bowen,* 817 F.2d 865 (D.C. Cir.1987), relied on by Ms. Harper, is not in point. In *Poulin* the ALJ reopened a prior claim and considered it on the merits. The Appeals Council also considered the claim on the merits. The court of appeals simply held that where the Secretary does not rely on the *res judicata* defense in agency proceedings, he cannot raise it initially upon judicial review.

Ms. Harper also contends that one of the forms she received from the agency was misleading about her right to future appeals of the denial of benefits. The brief she filed in this court refers to a letter she addressed to the Appeals Council on this issue, but the letter is not a part of the administrative record. Because the record does not indicate that the issue was raised at the administrative level, we are not in a position to consider the issue. See *Hix* v. *Director, Office of Workers' Comp. Programs,* 824 F.2d 526 (6th Cir.1987).

For the reasons stated, we find no error in the decision of the district court. The order in which that court dismissed Ms. Harper's lawsuit is therefore AFFIRMED.

[FR Doc. 95–14775 Filed 6–15–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended June 2, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50375.
Date filed: May 30, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC2 Telex Mail Vote 742, Fares Within Africa, r-1—071ww, r-2—079c.
Proposed Effective Date: June 15, 1995.

Docket Number: 50376.
Date filed: May 30, 1995.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso 064 dated April 25, 1995, Finally Adopted Resolutions—17, 1995 CSC, CSC/Minutes/021 dated April 17, 1995, r–1—003, r–2—600, r–3—600a, r–4—600d, r–5—600e, r–6—606, r–7—607, r–8—660, r–9—662, r–10—666, r–11—670, r–12—671, r–13—683, r–14—685, r–15—686, r–16—1600b, r–17—1600b(II), r–18—1600f, r–19—1600r, r–20—1601, r–21—1605, r–22—1608, r–23—1610, r–24—1640, r–25—1673.
Proposed Effective Date: October 1, 1995.

Paulette V. Twine,
Chief, Documentary Services Division.

[FR Doc. 95–14763 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 2, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50377.
Date filed: May 31, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 28, 1995
Description: Application of Shuttle America Airlines, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of passengers, property, and mail: Between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; and (iv) a territory or possession of the United States and another place in the same territory or possession.

Docket Number: 50379.
Date filed: June 1, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1995.
Description: Application of Custom Air Transport, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, requests issuance of a Certificate of Public Convenience and Necessity to provide Scheduled Interstate Air Transportation of property and mail within and between various points in the United States.

Paulette V. Twine,
Chief Documentary Services Division.

[FR Doc. 95–14762 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use revenue from a PFC at San Jose International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Lawndale, CA. 90261 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph Tonseth, Director of Aviation, at the following address: City of San Jose, San Jose International Airport, 1661 Airport Boulevard, San Jose, California 95110–1285. Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of San Jose under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus budget

Reconciliation Act of 1990 (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 5, 1995, the FAA determined that the application to impose and use a PFC submitted by the City of San Jose was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 5, 1995.

The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: September 1, 1995.

Proposed charge expiration date: March 15, 1998.

Total estimated PFC revenue: $9,094,000.00.

Brief description of the proposed projects:

Impose and Use Projects: Project No. 36 Runway 30L Reconstruction (B to C), Project No. 37 runway 30L Reconstruction (C to L), Project No. 38 Reconstruction runway 30L (J to L), Project No. 39 Reconstruction of Taxiways Y and K.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of San Jose, CA.

Issued in Hawthorne, California, on June 5, 1995.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 95–14787 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0034.

Form Number: POD 315.

Type of Review: Extension.

Title: Depositor's Application to Withdraw Postal Savings.

Description: This form is used as an application for payment by depositor or other legal representatives. This form serves to identify the depositor and insures payment is made to the proper person.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,075.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 538 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14008 Filed 6–15–95; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0354.

Recordkeeping Requirement ID Number: ATF REC 5170/3.

Type of Review: Extension.

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

Description: Audit trail records show amounts purchased and from whom; completes final audit trail established at distilled spirits plant. Protection of the revenue. The collection of information is contained in 27 CFR 194.234.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 455,000.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 455,000 hours.

OMB Number: 1512–0384.

Recordkeeping Requirement ID Number: ATF REC 5620/2.

Type of Review: Extension.

Title: Airlines Withdrawing Stock from Customs Custody.

Description: Airlines may withdraw tax-exempt distilled spirits, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification; also has Customs certification; enables ATF to verify that tax is not due; allows spirits and wines to be traced and maintains accountability. Protects tax revenues. The collections of information are contained in 27 CFR 252.280 and 252.281.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 25.

Estimated Burden Hours Per Recordkeeper: 100 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 2,500 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14809 Filed 6–15–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SpeciaL Request: On behalf of the Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury is requesting OMB review and approval of the information collection described below by June 30, 1995. This form has been revised to consolidate it with other related ATF information collections. Because of the length of ATF F 7 (5310.12), it cannot be published to allow public review and comment. A copy of ATF F 7 (5310.12) may be obtained by calling or writing to the ATF Clearance Officer listed below. All comments must be received by close of business June 27, 1995.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0042.

Form Number: ATF F 7 (5310.12).

Type of Review: Revision.

Title: Application for License under 18 U.S.C., Chapter 44, Firearms.

Description: This form is used by the public when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license used, The form is also used when a license for activities to deal, manufacture or import, and when responsible persons are added to an existing license.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 187,700 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14810 Filed 6–15–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

June 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1134.

Regulation ID Number: IA–141–83 Final (T.D. 8270).

Type of Review: Extension.

Title: Installment Method Reporting by Dealers in Personal Property.

Description: These regulations provide guidance with respect to the manner in which dealers are required to account for installment sales.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500,000 hours.

OMB Number: 1545–1326.

Form Number: IRS Form 2555–EZ.

Type of Review: Extension.

Title: Foreign Earned Income Exclusion.

Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion. This information is used by the Service to determine if a taxpayer qualifies for the exclusion. Form 2555–EZ is a less burdensome form that will be used where foreign earned income is $70,000 or less.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 43,478.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 min.

Learning about the law or the form—17 min. Preparing the form—42 min. Copying, assembling, and sending the form to the IRS—35 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 87,391 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14811 Filed 6–15–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 6, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1362.

Form Number: IRS Form 8835.

Type of Review: Revision.

Title: Renewal Electricity Production Credit.

Description: Filers claiming the general business credit for electricity produced from certain renewable resources under code sections 38 and 45 must file Form 8835.

Respondents: Business or other for-profit, Individuals or households

Estimated Number of Respondents/Recordkeepers: 70

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—9 hr., 5 min.

Learning about the law or the form—6 min.

Preparing and sending the form to the IRS—15 min.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 500,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14812 Filed 6–15–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0823.

Regulation ID Number: FI–221–83 NPRM; FI–100–83 Temporary Regulations.

Type of Review: Extension.

Title: Indian Tribal Governments Treated as States for Certain Purposes.

Description: The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indian tribal government or subdivision thereof for purposes of sections 7701(a)(40) and 7871, it may apply for a ruling from the IRS.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1545–1138.

Regulation ID Number: INTL–955–86 Final (T.D. 8350).

Type of Review: Extension.

Title: Requirements For Investments to Qualify Under Section 936(d)(4) as Investments in Qualified Caribbean Basin Countries.

Description: The collection of information is required by the Internal Revenue Service to verify that an investment qualifies under Internal Revenue Code (IRC) section 936(d)(4). The recordkeepers will be possession corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 50.

Estimated Burden Hours Per Recordkeeper: 30 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 1,500 hours.

OMB Number: 1545–1331.

Regulation ID Number: PS–55–89 Final.

Type of Review: Extension.

Title: General Asset Accounts Under the Accelerated Cost Recovery System.

Description: The regulations describe the time and manner of making the election described in Internal Revenue Code (IRC) Section 168(i)(4). Basic information regarding this election is necessary to monitor compliance with the rules in IRC Section 168.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 250 hours.

OMB Number: 1545–1338.

Regulation ID Number: PS–103–90 Final.

Type of Review: Extension.

Title: Election Out of Subchapter K for Producers of Natural Gas.

Description: Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (One-time only).

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1545–1416.

Form Number: IRS Form 8847 and Schedule A (Form 8847).

Type of Review: Revision.

Title: Credit for Contributions to Selected Community Development Corporations (8847); and Receipt, Designation and Certification of Qualified Contribution to a Selected Community Development Corporation (CDC) (Schedule A).

Description: Form 8847 is used to claim a credit for contributions to a selected community development corporation (CDC). The CDC issued Schedule A (Form 8847), with Part I completed, to the contributor to verify the contributor, to verify the contribution and to show the amount designated as eligible for the credit. The taxpayer certifies the contribution made in Part II of Schedule A.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8847	Schedule A (form 8847)
Recordkeeping	5 hr., 16 min	3 hr., 17 min.
Learning about the law or the form	18 min	0 min.
Preparing and sending the form to the IRS	23 min	3 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 45,600 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland, 04Departmental Reports Management Officer.

[FR Doc. 95–14813 Filed 6–15–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by June 23, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 95–010–G.

Type of Review: Revision.

Title: Fairness and Integrity Focus Group Interviews:

Description: The purpose of this study is to obtain more specific information about taxpayers' perceptions of the integrity and fairness of IRS employees, and to assess the relationship of these perceptions to compliance attitudes.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: Other.

Estimated Total Reporting Burden: 888 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14814 Filed 6–15–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Vista International Hotel, 1400 M Street, NW, Washington, DC, on July 11 through July 14, 1995.

The session on July 11, 1995, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on July 12, 13, 14, 1995, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public up to the seating capacity of the room for the July 11th session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 12–14, 1995, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Pub. L. 92–463 as amended by Section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202. Phone (410–962–2563) at least five days before the meeting.

Dated: June 8, 1995.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–14729 Filed 6–15–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 21, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

Note: Until further notice, open meetings will be held in the *Martin Building,* not the Eccles Building.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication of a notice requesting comment on Regulation Z (Truth in Lending) rules for consumer credit advertisements.

Discussion Agenda

2. Publication for comment of proposed amendments to the Board's risk-based capital guidelines to incorporate a measure for market risk in foreign exchange and commodity activities and in the trading of debt and equity instruments.
3. Publication for comment of proposed amendments to Regulation T (Credit by Brokers and Dealers) (proposed earlier for public comment; Docket No. R–0772).
4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14880 Filed 6–14–95; 10:35 am]

BILLING CODE 6210–01–P–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 21, 1995, following a recess at the conclusion of the open meeting.

PLACES: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any times carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14881 Filed 6–14–95; 10:36 am]

BILLING CODE 6210–01–P–M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

STATUS: Open.

MEETING: Meeting of the U.S. National Commission on Libraries and Information Science (NCLIS).

DATE AND TIME: July 14, 1995—9:00 a.m.–3:30 p.m.; July 15, 1995—8:30 a.m.–3:00 p.m.

PLACE: July 14, 1995—The Carnegie Library of Pittsburgh; July 15, 1995—Hyatt Regency Pittsburgh.

MATTERS TO BE DISCUSSED:

Chairperson's and Executive Director's reports
Organizational status of NCLIS and other federal agencies
Legislative update
Budgetary status of NCLIS, FY 1995
Status of NCLIS activities, FY 1995
Performance measures and budget request for NCLIS, FY 1997
Presentation on library and community connections in Pittsburgh/Allegheny County
Status report on the information infrastructure
Intellectual property and copyright
Discussion of NCLIS activities addressing information infrastructure, copyright, et al.
Presentation on American Association of Law Libraries

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: June 12, 1995.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 95–14906 Filed 6–14–95; 1:11 pm]

BILLING CODE 7527–01–M

UNITED STATES POSTAL SERVICE

Notice of Vote To Close Meeting

At its meeting on June 5, 1995, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for July 10, 1995, in Washington, D.C. The members will consider a modification in the funding of the Integrated Mail Handling System (IMHS).

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, Rider, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States

Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secreatry of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–14944 Filed 6–14–95; 8:45 am]

BILLING CODE 7710–12–M

Corrections

Federal Register

Vol. 60, No. 116

Friday, June 16, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Correction

In notice document 95–13993 appearing on page 30319 in the issue of Thursday, June 8, 1995, the heading should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

Correction

In notice document 95–13996 appearing on page 30318 in the issue of Thursday, June 8, 1995, in the first paragraph, in the third line, ''Games'' should read ''Ganes''.

BILLING CODE 1505–01–D

federal register

Friday
June 16, 1995

Part II

Department of Agriculture

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Proposed rulemaking.

SUMMARY: The Department of Agriculture proposes to revise the delegations of authority from the Secretary and general officers due to a reorganization.

DATES: Written comments must be received by July 17, 1995.

ADDRESSES: Comments may be mailed to Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, DC 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: On October 13, 1994, the President signed the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354. Title II of the Act, the Department of Agriculture Reorganization Act of 1994, permits the Secretary to reorganize the Department of Agriculture. The Act authorized the establishment of subcabinet positions and the restructuring of agencies and offices of the Department of Agriculture. On October 20, 1994, the Secretary signed Secretary's Memorandum No. 1010–1. The following subcabinet positions were established:

(A) *Under Secretary of Agriculture for Farm and Foreign Agricultural Services.* The Under Secretary of Agriculture for Farm and Foreign Agricultural Services supervises all activities of the Consolidated Farm Service Agency including the Federal Crop Insurance Corporation, and the Foreign Agricultural Service, and performs such other functions related to farm and foreign agricultural services as are assigned.

(B) *Under Secretary of Agriculture for Rural Economic and Community Development.* The Under Secretary of Agriculture for Rural Economic and Community Development supervises all activities of the Rural Utilities Service, the Rural Housing and Community Development Service, and the Rural Business and Cooperative Development Service, and performs such other functions related to rural economic and community development as are assigned.

(C) *Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.* The Under Secretary of Agriculture for Food, Nutrition, and Consumer Services supervises all activities of the Food and Consumer Service, coordinates functions related to nutrition policy and education, and performs such other functions related to food, nutrition, and consumer services as are assigned.

(D) *Under Secretary of Agriculture for Natural Resources and Environment.* The Under Secretary of Agriculture for Natural Resources and Environment supervises all activities of the Forest Service and the Natural Resources Conservation Service, coordinates functions related to agricultural environmental quality, and performs such other functions related to natural resources and environment as are assigned.

(E) *Under Secretary of Agriculture for Research, Education, and Economics.* The Under Secretary of Agriculture for Research, Education, and Economics supervises all activities of the Agricultural Research Service, the Cooperative State Research, Education, and Extension Service, the Economic Research Service, and the National Agricultural Statistics Service, and performs such other functions related to research, education, and economics as are assigned.

(F) *Under Secretary of Agriculture for Food Safety.* The position of Under Secretary of Agriculture for Food Safety is established by the Act. The Under Secretary supervises all activities of the Food Safety and Inspection Service, as well as functions under the Egg Products Inspection Act formerly performed by the Agricultural Marketing Service, and the *salmonella enteritidis* reduction program and pathogen reduction activities formerly performed by the Animal and Plant Health Inspection Service, and performs such other functions related to food safety as are assigned.

(G) *Assistant Secretary of Agriculture for Marketing and Regulatory Programs.* The Assistant Secretary of Agriculture for Marketing and Regulatory Programs supervises those activities of the Agricultural Marketing Service and the Animal and Plant Health Inspection Service which do not relate primarily to food safety, as well as all activities of the Grain Inspection, Packers and Stockyards Administration, and performs such other functions related to marketing and regulatory programs as are assigned.

(H) *Assistant Secretary of Agriculture for Congressional Relations.* The Assistant Secretary of Agriculture for Congressional Relations supervises all activities of USDA and its agencies and offices related to relationships with the Congress and with its committees and members, as well as functions related to intergovernmental relations, and performs such other functions as are assigned.

(I) *Assistant Secretary of Agriculture for Administration.* The Assistant Secretary of Agriculture for Administration supervises all activities of the Office of Civil Rights Enforcement, the Office of Information Resources Management, the Office of Operations, and the Office of Personnel, and provides administrative management for the Office of Administrative Law Judges, the Board of Contract Appeals, and the Judicial Officer, and performs such other functions related to administrative management as are assigned.

(J) *Chief Economist.* The Chief Economist supervises all activities of the Office of Risk Assessment and Cost-Benefit Analysis and the World Agricultural Outlook Board, and is assigned responsibility for advising the Secretary with respect to the economic effects of all proposed major programs and activities of USDA and for preparing economic analyses of USDA's principal initiatives.

The following agencies and offices were established within USDA:

(A) *Consolidated Farm Service Agency.* The Consolidated Farm Service Agency is headed by an Administrator who reports to the Under Secretary of Agriculture for Farm and Foreign Agricultural Services. The Agency is assigned responsibility for agricultural price and income support programs, production adjustment programs, and the conservation reserve and agricultural conservation programs formerly performed by the Agricultural Stabilization and Conservation Service, supervision of the Federal Crop Insurance Corporation, farm-related agricultural credit programs formerly performed by the Farmers Home Administration, and such other programs related to farm services as are assigned.

(B) *Rural Utilities Service.* The Rural Utilities Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Rural Economic and Community Development. The Service is assigned responsibility for electric and telephone loan programs formerly performed by

the Rural Electrification Administration, water and waste facility loans and grants formerly assigned to the Rural Development Administration, and such other functions related to rural utilities services as are assigned.

(C) *Rural Housing and Community Development Service.* The Rural Housing and Community Development Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Rural Economic and Community Development. The Service is assigned responsibility for housing loan programs formerly performed by the Farmers Home Administration, community facilities loan programs formerly performed by the Rural Development Administration, and such other programs related to rural housing and community development as are assigned.

(D) *Rural Business and Cooperative Development Service.* The Rural Business and Cooperative Development Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Rural Economic and Community Development. The Service is assigned responsibility for business and industry loan programs and assistance programs for cooperatives formerly performed by the Rural Development Administration, and such other functions related to rural business and cooperative development as are assigned.

(E) *Food and Consumer Service.* The Food and Consumer Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Food, Nutrition, and Consumer Services. The Service is assigned responsibility for all food stamp, school lunch, child nutrition, and special feeding programs formerly performed by the Food and Nutrition Service, and for such other functions related to food and consumer services as are assigned.

(F) *Natural Resources Conservation Service.* The Natural Resources Conservation Service is headed by a Chief who reports to the Under Secretary of Agriculture for Natural Resources and Environment. The Service is assigned responsibility for all soil and water conservation programs formerly performed by the Soil Conservation Service, the Wetlands Reserve, Water Bank, Colorado River Basin Salinity Control, and Forestry Incentives programs formerly performed by the Agricultural Stabilization and Conservation Service, the Farms for the Future Act program formerly performed by the Farmers Home Administration, and such other functions related to natural resources conservation as are assigned.

(G) *Cooperative State Research, Education, and Extension Service.* The Cooperative State Research, Education, and Extension Service is established by the Act. It is headed by an Administrator who reports to the Under Secretary of Agriculture for Research, Education, and Economics. The Service is assigned responsibility for all cooperative State and other research programs formerly performed by the Cooperative State Research Service, all cooperative education and extension programs formerly performed by the Extension Service, and such other functions related to cooperative research, education, and extension as are assigned.

(H) *Grain Inspection, Packers and Stockyards Administration.* The Grain Inspection, Packers and Stockyards Administration is headed by an Administrator who reports to the Assistant Secretary of Agriculture for Marketing and Regulatory Programs. The Administration is assigned responsibility for all programs and activities formerly performed by the Federal Grain Inspection Service and by the Packers and Stockyards Administration, and such other functions related to regulatory programs as are assigned.

(I) *National Appeals Division.* The National Appeals Division is headed by a Director who reports to the Secretary. The Division is assigned responsibility for all administrative appeals formerly performed by the National Appeals Division of the Agricultural Stabilization and Conservation Service and by the National Appeals Staff of the Farmers Home Administration, appeals arising from decisions of the Federal Crop Insurance Corporation and the Soil Conservation Service, appeals arising from decisions of the successors to these agencies established by this Memorandum, and such other administrative appeals arising from decisions of agencies and offices of USDA as are assigned.

(J) *Office of Risk Assessment and Cost-Benefit Analysis.* The Office of Risk Assessment and Cost-Benefit Analysis is headed by a Director who reports to the Chief Economist. The Office is assigned responsibility for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the **Federal Register**. The Office also has responsibility for such other analytical functions as are assigned.

The following subcabinet positions were abolished:

(A) Under Secretary of Agriculture for International Affairs and Commodity Programs.

(B) Under Secretary of Agriculture for Small Community and Rural Development.

(C) Assistant Secretary of Agriculture for Economics.

(D) Assistant Secretary of Agriculture for Food and Consumer Services.

(E) Assistant Secretary of Agriculture for Marketing and Inspection Services.

(F) Assistant Secretary of Agriculture for Natural Resources and Environment.

(G) Assistant Secretary of Agriculture for Science and Education.

The following agencies and offices within USDA were abolished:

(A) Agricultural Stabilization and Conservation Service.

(B) Farmers Home Administration.

(C) Rural Development Administration.

(D) Rural Electrification Administration.

(E) Food and Nutrition Service.

(F) Soil Conservation Service.

(G) Cooperative State Research Service.

(H) Extension Service.

(I) National Agricultural Library.

(J) Federal Grain Inspection Service.

(K) Packers and Stockyards Administration.

(L) Office of the Consumer Advisor.

In addition, the following agencies are abolished:

(A) Office of International Cooperation and Development.

(B) Office of Energy.

(C) Economic Analysis Staff.

(D) Economics Management Staff.

(E) Agricultural Cooperative Service.

In connection with this reorganization, the Secretary on October 20, 1994, designated a major agency of the Department, in keeping with the reorganization legislation, as the ''Consolidated Farm Service Agency.'' That agency is charged with responsibility for all agricultural price and income support programs, disaster and crop insurance programs, and farm program lending activities. Upon reflection, it is proposed herein that the name be changed to ''Farm Service Agency,'' for purposes of simplicity and in order better to reflect that agency's mission.

Pursuant to Pub. L. 101–576, the Chief Financial Officers Act of 1990 (CFO Act), there is required to be in the Department of Agriculture the position of Chief Financial Officer (CFO). This document makes delegations to the CFO. It also abolishes the Office of Finance and Management. The CFO Act provides that the CFO, in addition to other specified duties, shall oversee all

financial management activities relating to the programs of the Department; develop and maintain an integrated Department accounting and financial management system; direct, manage, and provide policy guidance and oversight of Department financial management personnel, activities, and operations; monitor the financial execution of the budget of the Department in relation to projected and actual expenditures; review the financial management budgets of the component agencies, and provide recommendations to the Office of Budget and Program Analysis; provide advice and make recommendations to the Secretary on financial management and other program matters, including budget levels for financial management budgets; and review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the Department for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred in providing those services and things of value.

Section 212(c) of the Act provides that the Secretary shall, to the extent practicable give advance public notice of the proposed reorganization of the Department or the delegation of any major functions to any agency or officer. Accordingly, it is proposed to revise 7 CFR Part 2 as set forth below.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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2.26 Director, Office of the Executive Secretariat.
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2.31 General Counsel.
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2.33 Inspector General.
2.34 Director, National Appeals Division.
2.35 Judicial Officer.
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2.37 Director, Office of Small and Disadvantaged Business Utilization.

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.
2.42 Administrator, Farm Service Agency.
2.43 Administrator, Foreign Agricultural Service.

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

2.45 Deputy Under Secretary for Rural Economic and Community Development.
2.47 Administrator, Rural Utilities Service.
2.48 Administrator, Rural Business and Cooperative Development Service.
2.49 Administrator, Rural Housing and Community Development Service.

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

2.51 Deputy Under Secretary for Food Safety.
2.53 Administrator, Food Safety and Inspection Service.

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.
2.57 Administrator, Food and Consumer Service.

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

2.59 Deputy Under Secretaries for Natural Resources and Environment.
2.60 Chief, Forest Service.
2.61 Chief, Natural Resources Conservation Service.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

2.63 Deputy Under Secretary for Research, Education, and Economics.
2.65 Administrator, Agricultural Research Service.
2.66 Administrator, Cooperative State Research, Education, and Extension Service.
2.67 Administrator, Economic Research Service.
2.68 Administrator, National Agricultural Statistics Service.

Subpart L—Delegations of Authority by the Chief Economist

2.70 Deputy Chief Economist.
2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.
2.72 Chairman, World Agricultural Outlook Board.

Subpart M—Delegations of Authority by the Chief Financial Officer

2.75 Deputy Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.
2.79 Administrator, Agricultural Marketing Service.
2.80 Administrator, Animal and Plant Health Inspection Service.
2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

2.83 Deputy Assistant Secretary for Congressional Relations.
2.85 Director, Office of Congressional and Intergovernmental Relations.

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

2.87 Deputy Assistant Secretary for Administration.
2.89 Director, Office of Civil Rights Enforcement.
2.90 Director, Office of Information Resources Management.
2.91 Director, Office of Operations.
2.92 Director, Office of Personnel.

Authority: Sec. 212(a), Pub. L. 103–353, 108 Stat. 3210 (7 U.S.C. 6912(a)(1)); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart A—General

§ 2.1 Establishment of the Department.

The Department of Agriculture was created by the Act of May 15, 1862, and

by the Act of February 9, 1889, it was made an executive department in the Federal Government under the supervision and control of the Secretary of Agriculture (7 U.S.C. 2201, 2202, 2204).

§ 2.2 Authority of the Secretary to prescribe regulations.

The general authority of the Secretary to prescribe regulations governing the work of the Department is based on 5 U.S.C. 301 which provides that the head of an Executive department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers, and property.

§ 2.3 Authority of the Secretary to delegate authority.

(a) The general authority of the Secretary to make delegations of his authority is based on:

(i) Section 4(a) of Reorganization Plan No. 2 of 1953 which provides that the Secretary of Agriculture may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by an agency or employee, of the Department of Agriculture of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan;

and

(ii) Section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, 7 U.S.C. 6912(a)(1), which provides that the Secretary may delegate to any agency, office, officer, or employee of the Department the authority to perform any function transferred to the Secretary under section 211(a) or any other function vested in the Secretary as of the date of the enactment of the Act.

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: the Deputy Secretary; the Under Secretary for Farm and Foreign Agricultural Services; the Under Secretary for Rural Economic and Community Development; the Under Secretary for Food Safety; the Under Secretary for Food, Nutrition, and Consumer Services; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Assistant Secretary for Marketing and Regulatory Programs; the Assistant Secretary for Congressional Relations; the Assistant Secretary for Administration; the General Counsel; the Inspector General; the Chief Financial Officer; the Judicial Officer; the Director, Office of Budget and Program Analysis; the Chief Economist; the Director, National Appeals Division; the Director of Communications; and the Director, Office of Small and Disadvantaged Business Utilization.

§ 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 11957, 3 CFR, 1977 Comp., p. 79, in the case of the absence, sickness, resignation, or death of both the Secretary and the Deputy Secretary, the officials designated in paragraphs (a)(1) through (a)(10) shall act as Secretary in the order in which they are listed. Each official shall act only in the absence, sickness, resignation, or death of the immediately preceding official:

(1) The Under Secretary for Farm and Foreign Agricultural Services.

(2) The Under Secretary for Rural Economic and Community Development.

(3) The Under Secretary for Food Safety.

(4) The Under Secretary for Food, Nutrition, and Consumer Services.

(5) The Under Secretary for Natural Resources and Environment.

(6) The Under Secretary for Research, Education, and Economics.

(7) The General Counsel.

(8) The Assistant Secretary for Marketing and Regulatory Programs.

(9) The Assistant Secretary for Administration.

(10) The Assistant Secretary for Congressional Relations.

Subpart B—General Delegations of Authority by the Secretary of Agriculture

§ 2.7 Authority to supervise and direct.

Unless specifically reserved, or otherwise delegated, the delegations of authority to each general officer of the Department and each agency head contained in this part includes the authority to direct and supervise the employees engaged in the conduct of activities under such official's jurisdiction, and the authority to take any action, execute any document, authorize any expenditure, promulgate any rule, regulation, order, or instruction required by or authorized by law and deemed by the general officer or agency head to be necessary and proper to the discharge of his or her responsibilities. This authority will be exercised subject to applicable administrative rules and regulations. Unless otherwise provided, a general officer or agency head may, subject to his or her continuing responsibility for the proper discharge of delegations made to him, in this part, delegate and provide for the redelegation of his or her authority to appropriate officers and employees. Subject to the general supervision of the Secretary, agency heads who are delegated authority from a general officer, in this part or elsewhere, report to and are under the supervision of that general officer.

§ 2.8 Delegations of authority to agency heads to order that the United States flag be flown at half-staff.

Pursuant to section 5 of Presidential Proclamation 3044, 3 CFR, 1954–1958 Comp., p. 4, each general officer and agency head is delegated authority to order that the United States flag shall be flown at half-staff on buildings and grounds under his or her jurisdiction or control. This authority shall be exercised in accordance with directives promulgated by the Director, Office of Operations.

§ 2.9 Additional delegations.

The authority granted to a general officer may be exercised in the discharge of any additional functions which the Secretary may assign.

§ 2.10 Limitations.

The delegations made in this part shall not be construed to confer upon any general officer or agency head the authority of the Secretary to prescribe regulations which by law require approval of the President.

§ 2.11 New principles and periodic reviews.

In the exercise of authority delegated by the Secretary, the application of new principles of major importance or a departure from principles established by the Secretary should be brought to the attention of the Secretary. General officers are responsible for assuring that periodic reviews are conducted of the activities of the agencies assigned to their direction and supervision, as required by 5 U.S.C. 305.

§ 2.12 Secretary and general officers not precluded from exercising delegated powers.

No delegation of authority by the Secretary or a general officer contained in this part shall preclude the Secretary or general officer from exercising any of the authority so delegated.

§ 2.13 Status of prior delegations.

Nothing in this part shall affect the bylaws of the Commodity Credit

Corporation, the Federal Crop Insurance Corporation, or the Rural Telephone Bank. All delegations previously made which are inconsistent with delegations made in this part are superseded; however, any regulation, order, authorization, expenditure, or other instrument, heretofore issued or made pursuant to any delegation of authority shall continue in full force and effect unless and until withdrawn or superseded pursuant to authority granted in this part.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

§ 2.15 Deputy Secretary.

The following delegation of authority is made by the Secretary of Agriculture to the Deputy Secretary: Perform all of the duties and exercise all of the powers and functions which are now, or which may hereafter be, vested in the Secretary of Agriculture. This delegation is subject to the limitation in § 2.10.

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Farm and Foreign Agricultural Services:

(1) *Related to consolidated farm service.* (i) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282, *et seq.*).

(ii) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441, *et seq.*).

(iii) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(A) Clearing photography projects;

(B) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(C) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(D) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(E) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction, and serving as liaison with other governmental agencies on aerial photography but excluding mapping;

(F) Providing a Chairperson for the Photography Sales Committee of the Department;

(G) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(H) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(I) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(J) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(iv) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501, *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g, *et seq.*).

(v) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201, *et seq.*).

(vi) Conduct fiscal, accounting and claims functions relating to Commodity Credit Corporation (CCC) programs for which the Under Secretary for Farm and Foreign Agricultural Services has been delegated authority under paragraph (a)(3) of this section and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(vii) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98, *et seq.*).

(viii) Supervise and direct Farm Service Agency State and county offices and delegate functions to be performed by Farm Service Agency State and county committees.

(ix) Administer the dairy indemnity program under the Act of August 13, 1968, as amended (7 U.S.C. 450j, *et seq.*).

(x) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1), except as delegated in paragraph (a)(3) of this section and to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19, and assist the Under Secretary for Food, Nutrition, and Consumer Services and the Assistant Secretary for Marketing and Regulatory Programs in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751, *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(xi) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781, *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(xii) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501, *et seq.*), except those functions delegated in § 2.21(a)(8)(xi).

(xiii) Administer energy management activities as assigned.

(xiv) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901, *et seq.*), and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001, *et seq.*).

(xv) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(xvi) Administer the U.S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(xvii) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(xviii) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231, *et seq.*).

(xix) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(xx) Administer the Integrated Farm Management Program under the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(xxi) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(xxii) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(xxiii) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(2) *Related to farm credit.* (i) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*), except for the authority contained in the following sections:

(A) Section 303(a)(2) and (3) (7 U.S.C. 1923(a)(2) and (3)), relating to real estate loans for recreation and non-farm purposes;

(B) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(C) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(D) Section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b), relating to the emergency community water assistance grant programs;

(E) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(F) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(G) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(H) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(I) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(J) Section 342 (7 U.S.C. 1013a);

(K) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(L) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(ii) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(iii) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440, *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(iv) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(v) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(vi) Administer the Emergency Loan and Guarantee Programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. 91–606), the Disaster Relief Act of 1969 (Pub. L. 91–79), Pub. L. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. 93–357), as amended.

(vii) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(viii) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(ix) Service, collect, settle, and liquidate:

(A) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, ''Water Conservation and Utilization projects'' in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(B) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(C) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(x) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(xi) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101, *et seq.*)

(xii) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(xiii) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. No. 103–248 (7 U.S.C. 1981(c)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(3) *Related to foreign agriculture.* (i) Coordinate the carrying out by Department agencies of their functions involving foreign agricultural policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development, and other departments, agencies, and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private U.S. and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(ii) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing

operations under section 32 of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs, and utilization research delegated to the Under Secretary for Research, Education, and Economics.

(iii) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(iv) Conduct functions of the Department relating to GATT, WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801, *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101, *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901, *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act, and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(v) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(vi) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(vii) Administer functions of the Department relating to import controls, except those functions reserved to the Secretary in paragraph (b) of this section and those relating to section 8e of the Agricultural Act of 1938 (7 U.S.C. 608e-1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs. These include:

(A) Functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624);

(B) General note 15(c) to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(C) Requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Recovery Act of 1983 (19 U.S.C. 2703(f));

(D) Section 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note);

(E) Section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e));

(F) Functions under sections 309 and 316 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3358 and 3381);

(G) Section 301(a) of the United States-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note); and

(H) Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

(viii) Represent the Department on the Interdepartmental Committee for Export Control and to conduct departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, *et seq.*), except as reserved to the Secretary under paragraph (b)(2) of this section.

(ix) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such Agreement.

(x) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013; the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(xi) Formulate policies and administer barter programs under which agricultural commodities are exported.

(xii) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities under Public Law 480, 83rd Congress, hereafter referred to as ''Public Law 480'' (7 U.S.C. 1691, 1701, *et seq.*).

(xiii) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*), and payment and related services with respect to export programs and barter operations.

(xiv) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8)), and represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(xv) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(xvi) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(xvii) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738, *et seq.*).

(xviii) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(xix) Determine the agricultural commodities acquired under price support programs which are available for export and allocate such commodities among the various export programs.

(xx) Conduct economic analyses pertaining to the foreign sugar situation.

(xxi) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(xxii) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(xxiii) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(xxiv) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(xxv) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601, *et seq.*).

(xxvi) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated to the Assistant Secretary for Marketing and Regulatory Programs in § 2.22(a)(2)(i), but including authority to approve joint regulations issued by the Department of State and authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(xxvii) Establish and maintain U.S. Agricultural Trade Offices, to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. 95–501 (7 U.S.C. 1765a–g).

(xxviii) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities.

(xxix) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(xxx) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(xxxi) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o).

(xxxii) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish international scientific and technical cooperation in food and agriculture.

(xxxiii) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151, *et seq.*).

(xxxiv) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(xxxv) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(xxxvi) Direct and coordinate the Department's work in international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201–2202).

(xxxvii) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(xxxviii) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(xxxix) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(xl) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(xli) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(xlii) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(4) *Related to federal crop insurance.* (i) Exercise general supervision of the Federal Crop Insurance Corporation.

(ii) Appoint such officers and employees as may be necessary for the transaction of the business of the Corporation, except, as provided in paragraph (b)(3) of this section.

(5) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(6) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning agricultural production; food processing, storage, and distribution; distribution of farm equipment and fertilizer; rehabilitation and use of food, agricultural and related agribusiness facilities; CCC resources; farm credit and financial assistance; and foreign agricultural intelligence and other foreign agricultural matters.

(7) Related to environmental response. With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to farm service.* (i) Appointment of Farm Service Agency State committeemen.

(ii) Final approval of regulations relating to the selection and exercise of the functions of committees promulgated under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)).

(2) *Related to foreign agriculture.* (i) Approving export controls with respect to any agricultural commodity, including fats and oils or animal hides or skins as provided for in the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, *et seq.*).

(ii) Advising the President that imports are having the effect on programs or operations of this Department required as a prerequisite for the imposition of import controls under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624a), recommending that the President cause an investigation to be made by the Tariff Commission of the facts so that a determination can be made whether import restrictions should be imposed under that Act, and determining under section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e)) that there exists a serious injury, or threat thereof and recommending to the President whether or not to take action.

(iii) Determining the agricultural commodities and the quantities thereof available for disposition under Public Law 480 (7 U.S.C. 1731).

(3) *Related to federal crop insurance.* (i) Appointment of the Board of Directors, Federal Crop Insurance Corporation.

(ii) Appointment of the Manager, Federal Crop Insurance Corporation.

§ 2.17 Under Secretary for Rural Economic and Community Development.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Rural Economic and Community Development:

(1) Provide leadership and coordination within the executive branch of a Nationwide Rural Development Program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(2) Coordinate activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating official for other departmental agencies having primary responsibilities for specific titles of the Rural Development Act of 1972, and allied legislation.

(3) Administer a national program of economic, social, and environmental research and analysis, statistical programs, and associated service work related to rural people and the communities in which they live including rural industrialization; rural population and manpower; local government finance; income development strategies; housing; social services and utilization; adjustments to changing economic and technical forces; and other related matters.

(4) Work with Federal agencies in encouraging the creation of rural community development organizations.

(5) Assist other Federal agencies in making rural community development organizations aware of the Federal programs available to them.

(6) Advise rural community development organizations of the availability of Federal assistance programs.

(7) Advise other Federal agencies of the need for particular Federal programs.

(8) Assist rural community development organizations in making contact with Federal agencies whose assistance may be of benefit to them.

(9) Assist other Federal agencies and national organizations in developing means for extending their services effectively to rural areas.

(10) Assist other Federal agencies in designating pilot projects in rural areas.

(11) Conduct studies to determine how programs of the Department can be brought to bear on the economic development problems of the country and assure that local groups are receiving adequate technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities.

(12) Assist other Federal agencies in formulating manpower development and training policies.

(13) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be re-delegated.

(14) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning rural development credit and financial assistance.

(15) *Related to energy.* (i) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products or by-products.

(ii) Participate as a Department representative at conferences, meetings and other contacts including liaison with the Department of Energy and other government agencies and departments with respect to implementation of established Department energy policy.

(iii) Serve as Co-Chairperson of the Energy Coordinating Committee of the Department.

(16) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service, the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service, or their predecessor agencies.

(17) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service and the Rural Utilities Service.

(18) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(19) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(20) *Related to rural utilities service.* (i) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*) except for rural economic development loan and grant programs; (7 U.S.C. 940c and 950aa, *et seq.*): Provided, however, that the Under Secretary may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(ii) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(iii) Designate the chief executive officer of the Rural Telephone Bank.

(iv) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(B) Section 306A (7 U.S.C. 1926a);

(C) Section 306B (7 U.S.C. 1926b);

(D) Section 306C (7 U.S.C. 1926c);

(E) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(G) Section 310B(b) (7 U.S.C. 1932(b));

(H) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships; and

(I) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural utility activities.

(v) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(vi) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(vii) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(viii) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa, *et seq.*).

(ix) Administer Water and Waste Facility Programs and activities (7 U.S.C. 1926–1).

(21) *Related to rural business and cooperative development.* (i) Administer the Rural Economic Development Loan and Grant Programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa, et *seq.*).

(ii) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306(a)(11)(A) (7 U.S.C. 1926 (a)(11)(A)), relating to grants for business technical assistance and planning;

(B) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(C) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(D) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(E) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business and cooperative development activities.

(iii) Administer Alcohol Fuels Credit Guarantee Program Account (Pub. L. 102–341, 106 Stat. 895).

(iv) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(v) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(vi) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

(vii) Administer the Drought and Disaster Guaranteed Loan Program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(viii) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(ix) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(x) Administer the Economically Disadvantaged Rural Community Loan Program (7 U.S.C. 6616).

(xi) Administer the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901, *et seq.*).

(xii) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(xiii) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(xiv) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(A) Exchanging materials and results with such institutions or organizations;

(B) Engaging in joint or coordinated activities; or

(C) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(xv) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Pub. L. 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391, *et seq.*)

(xvi) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(xvii) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(xviii) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(xix) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(xx) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development

organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program (7 U.S.C. 2204; 7 U.S.C. 2204b).

(22) *Related to rural housing and community development.* (i) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);

(B) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing and community development activities.

(ii) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471, *et seq.*), except those functions pertaining to research.

(iii) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(iv) Administer the Rural Housing Disaster Program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. 91–606).

(v) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (42 U.S.C. 1480(d)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to rural business and cooperative development.* Submission to the Congress of the report required pursuant to section 1469 of Pub. L. 101–624.

§ 2.18 Under Secretary for Food Safety.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food Safety:

(1) *Related to food safety and inspection.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(ii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(B) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(C) Egg Products Inspection Act, except for the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(D) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(E) Humane Slaughter Act (7 U.S.C. 1901–1906);

(F) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products; and

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427).

(iii) Coordinate with the Assistant Secretary for Marketing and Regulatory Programs the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(iv) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(2) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning the wholesomeness of meat and poultry and products thereof and inspection of eggs and egg products.

(4) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology as they may affect the safety of meat, poultry or egg products.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the

acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food, Nutrition, and Consumer Services:

(1) *Related to food and nutrition.* (i) Administer the following legislation:

(A) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(B) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(C) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(D) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(ii) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(A) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(B) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(C) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937, as amended (15 U.S.C. 713c), and related legislation;

(D) Section 9 of the Act of September 6, 1958, as amended (7 U.S.C. 1431b);

(E) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(F) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(G) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(H) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(I) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(J) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(K) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. 97–98);

(L) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(M) Sections 3 (b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(N) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(iii) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(iv) In connection with the functions assigned in paragraphs (a)(1) (i), (ii) and (iii) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(v) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a)

and 202A of the Emergency Food Assistance Act of 1983.

(2) *Related to consumer advice.* (i) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(ii) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(iii) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(iv) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(v) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(vi) Serve as a consumer ombudsman and communication link between consumers and the Department.

(vii) Approve the designation of agency Consumer Affairs Contacts.

(3) *Related to human nutrition information.* (i) Develop techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet.

(ii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels.

(iii) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions.

(iv) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy.

(v) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs.

(vi) Coordinate nutrition education promotion and professional education projects within the Department.

(vii) Analyze data from food consumption surveys in coordination with the Under Secretary for Research, Education, and Economics to provide a basis for evaluating dietary adequacy.

(viii) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies (7 U.S.C. 3171–3175).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning food stamp assistance.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to food and nutrition.* Authority to appoint the members of the National Advisory Council on Maternal, Infant, and Fetal Nutrition as directed in section 17(k) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(k)).

(2) [Reserved]

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment:

(1) *Related to environmental quality.* (i) Administer the implementation of the National Environmental Policy Act for the United States Department of Agriculture (USDA).

(ii) Provide representation for USDA on the National Response Team on hazardous spills pursuant to Pub. L. 92–500 (33 U.S.C. 1151 note), and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(iii) Represent USDA in contacts with the United States Environmental Protection Agency, the Council on Environmental Quality, and other organizations or agencies on matters related to assigned responsibilities.

(iv) Formulate and promulgate USDA policy relating to environmental activity and natural resources.

(v) Provide staff support for the Secretary in the review of environmental impact statements.

(vi) Provide leadership in USDA for general land use activities including implementation of Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.

(2) *Related to forestry.* (i) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(ii) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interests in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(iii) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or more which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(iv) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(v) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their

duties within the boundaries of the National Forest System:

(A) To carry firearms;

(B) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(C) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(D) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(E) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(F) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(vi) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(vii) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125 (a)–(c), 138, 202 (a)–(b), 203, 204 (a)–(h), 205 (a)–(d), 211, 317, 402(a)).

(viii) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR parts 215 and 217 and 36 CFR part 251, subpart C.

(ix) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(x) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(xi) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(xii) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(xiii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(xiv) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(xv) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(xvi) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(xvii) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(xviii) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(xix) Administer Rural Fire Protection and Control Programs (16 U.S.C. 2106).

(xx) Provide technical assistance on forestry technology or the implementation of the Conservation Reserve and Softwood Timber Programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(xxi) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(xxii) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(xxiii) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(A) Administer the forestry aspects of the programs listed in paragraphs (a)(2)(xxiii)(A) (*1*), (*2*) and (*3*) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands;

(*1*) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(*2*) The Eleven Authorized Watershed Improvement Programs and Emergency Flood Prevention Measures Program under the Flood Control Act (33 U.S.C. 701b–1); and

(*3*) The Small Watershed Protection Program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009); and

(B) Exercise responsibility in connection with the forestry aspects of the Resource Conservation and Development Program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(xxiv) Provide assistance to the Farm Service Agency in connection with the Agricultural Conservation Program, the Naval Stores Conservation Program, and the Cropland Conversion Program (16 U.S.C. 590g–q).

(xxv) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(xxvi) Coordinate mapping work of USDA including:

(A) Clearing mapping projects to prevent duplication;

(B) Keeping a record of mapping done by USDA agencies;

(C) Preparing and submitting required USDA reports;

(D) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(E) Promoting interchange of technical mapping information, including

techniques which may reduce costs or improve quality; and

(F) Maintaining the mapping records formerly maintained by the Office of Operations.

(xxvii) Administer the radio frequency licensing work of USDA, including:

(A) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(B) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(C) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith;

(D) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use; and

(E) Representing USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(xxviii) [Reserved]

(xxix) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(xxx) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(xxxi) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(xxxii) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(xxxiii) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278).

(xxxiv) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Regulatory Programs, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(xxxv) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226, *et seq.*).

(xxxvi) Administer the Public Lands Corps program (16 U.S.C. 1721, *et seq.*) for USDA consistent with the Department's overall national service program.

(xxxvii) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xxxviii) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(3) *Related to natural resources conservation.* (i) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(A) Quality in the natural resource base for sustained use;

(B) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(C) Quality in the standard of living based on community improvement and adequate income.

(ii) Provide national leadership in and evaluate and coordinate land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201, *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 4201 note), except as otherwise delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(1)(lxii).

(iii) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590a–f, i–1, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(A) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(*1*) Comprehensive planning assistance in nonmetropolitan districts;

(*2*) Assistance in the field of income-producing recreation on rural non-Federal lands;

(*3*) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(*4*) Assistance in developing programs relating to natural beauty; and

(*5*) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*i*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*ii*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs;

(B) Soil surveys, including:

(*1*) Providing leadership for the Federal part of the National Cooperative

Soil Survey which includes conducting and publishing soil surveys;

(*2*) Conducting soil surveys for resource planning and development; and

(*3*) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps;

(C) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(D) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(E) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(iv) Administer the Watershed Protection and Flood Prevention Programs, including:

(A) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1;

(B) The emergency flood control work under 33 U.S.C. 701b–1;

(C) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006;

(D) The pilot watershed projects under 16 U.S.C. 590a–f and 16 U.S.C. 1001–1009;

(E) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development;

(F) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(G) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201, *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Under Secretary for Farm and Foreign Agricultural Services.

(v) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b), 590q and 590q–3.

(vi) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development.

(vii) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(viii) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001, *et seq.*).

(ix) Administer the Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251, *et seq.*).

(x) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(xi) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(xii) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c), including:

(A) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(B) Conduct salinity control studies of irrigated salt source areas;

(C) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(D) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(E) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(F) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(xiii) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801, *et seq.*), including responsibilities for:

(A) the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(B) technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(C) the Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(D) the Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(E) the Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(xiv) Approve and transmit to the Congress comprehensive river basin reports.

(xv) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(xvi) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xvii) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301, *et seq.*).

(xviii) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(xix) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(xx) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455 (a) and (c)).

(4) *Related to committee management.* Establish and reestablish regional, state, and local advisory

committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to agricultural land and water, forests and forest products, rural fire defense, and forestry research.

(6) *Related to surface mining control and reclamation.* Administer responsibilities and functions assigned to the Secretary of Agriculture under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*).

(7) *Related to environmental response.* (i) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order No. 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(ii) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(A) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(B) Sections 104(e)-(h) of the Act (42 U.S.C. 9604(e)-(h)), with respect to information gathering and access requests and orders; compliance orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(C) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(D) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(E) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(F) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(G) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(H) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(I) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(J) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(K) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(L) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(M) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(N) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(O) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), relating to mixed funding agreements.

(iii) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the ''Federal Land Manager'' pursuant to the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*).

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to natural resource conservation.* Designation of new project areas in which the resource conservation and development program assistance will be provided.

(2) [Reserved]

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics.

(1) *Related to science and education.*

(i) Direct, coordinate and provide national leadership and support for research, extension and teaching programs in the food and agricultural sciences to meet major needs and challenges in development of new food and fiber; food and agriculture viability and competitiveness in the global economy; enhancing economic opportunities and quality of life for

rural America; food and agricultural system productivity and development of new crops and new uses; the environment and natural resources; or the promotion of human health and welfare pursuant to the National Agricultural Research, Extension, and Teaching Policy of 1977, as amended (7 U.S.C. 3101, *et seq.*).

(ii) Provide national leadership and support for research, extension, and teaching programs in the food and agricultural sciences to carry out sustainable agriculture research and education; a National Plant Genetic Resources Program; a national agricultural weather information system; research regarding the production, preparation, processing, handling, and storage of agricultural products; a Plant and Animal Pest and Disease Control Program; and any other provisions pursuant to title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. No. 101–624, 104 Stat. 3703), except the provisions relating to the USDA Graduate School in section 1669 and the provisions relating to alternative agricultural research and commercialization under sections 1657–1664 (7 U.S.C. 5801, *et seq.*).

(iii) Coordinate USDA policy and conduct programs relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(iv) Carry out research, technology development, technology transfer, and demonstration projects related to the economic feasibility of the manufacture and commercialization of natural rubber from plants containing hydrocarbons (7 U.S.C. 178–178n).

(v) Conduct research on the control of undesirable species of honey bees in cooperation with specific foreign governments (7 U.S.C. 284).

(vi) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(vii) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(viii) Administer a Cooperative Agricultural Extension Program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(ix) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(x) Support agricultural research at eligible institutions in the States through the provision of Federal-grant funds to help finance physical research facilities (7 U.S.C. 390–390k).

(xi) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(xii) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(xiii) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(xiv) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(xv) Administer and conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, and animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in § 2.22(a)(1)(ii) and § 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201, and 2204).

(xvi) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(xvii) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(xviii) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(xix) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i).

(xx) Administer and direct a program of competitive and special grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals and of facilities grants to State agricultural experiment stations and designated colleges and universities to promote research in food, agriculture and related areas (7 U.S.C. 450i).

(xxi) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(xxii) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities (7 U.S.C. 950aa–1).

(xxiii) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(xxiv) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the byproducts thereof (7 U.S.C. 1292).

(xxv) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(xxvi) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(xxvii) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(xxviii) Administer a competitive grant program for non-profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(xxix) Administer a Nutrition Education Program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(xxx) Conduct education and extension programs and a pilot project related to nutrition education (7 U.S.C. 2027(a) and 5932).

(xxxi) Provide for the dissemination of appropriate rural health and safety information resources possessed by the Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(xxxii) Develop and maintain national and international library and information systems and networks and

facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(xxxiii) Accept gifts and order disbursements from the Treasury for carrying out of National Agricultural Library (NAL) functions (7 U.S.C. 2264–2265).

(xxxiv) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(xxxv) Administer, in cooperation with the States, a Cooperative Rural Development and Small Farm Research and Extension Program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(xxxvi) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(xxxvii) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to agricultural research conducted or funded by the Department involving biotechnology, including the development and implementation of guidelines for oversight of research activities, acting as liaison on all matters and functions pertaining to agricultural research in biotechnology between agencies within the Department and between the Department and other governmental, educational, or private organizations and carrying out any other activities authorized by (7 U.S.C. 3121).

(xxxviii) Establish a Joint Council on Food and Agricultural Sciences to bring about more effective research, extension, and teaching in the food and agricultural sciences (7 U.S.C. 3122).

(xxxix) Establish and oversee the National Agricultural Research and Extension Users Advisory Board and the Agricultural Science and Technology Review Board (7 U.S.C. 3123 and 3123A).

(xl) Provide and distribute information and data about Federal, State, local, and other Rural Development Assistance Programs and services available to individuals and organizations. To the extent possible, NAL shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(xli) Assemble and collect food and nutrition educational material, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(xlii) Conduct programs related to composting research and extension (7 U.S.C. 3130).

(xliii) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(xliv) Formulate and administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(xlv) Administer the National Food and Agricultural Sciences Teaching Awards Program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(xlvi) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(xlvii) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(xlviii) Establish a national food science and research center for the Southeast Region of the United States and administer a National Food and Human Nutrition Research and Extension Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(xlix) Administer and direct an Animal Health and Disease Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(l) Support continuing agricultural and forestry extension and research, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(li) Support agricultural research at the 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance physical facilities (7 U.S.C. 3223).

(lii) Make grants, under such terms and conditions as the Under Secretary determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(liii) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural science, education and development activities (7 U.S.C. 3291).

(liv) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(lv) Conduct program evaluations to improve the administration and effectiveness of agricultural research, extension, and teaching programs (7 U.S.C. 3317).

(lvi) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agriculture sciences (7 U.S.C. 3318).

(lvii) Enter into cost-reimbursable agreements with State cooperative institutions for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

(lviii) Conduct research and develop and implement a pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(lix) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers; and making grants to aquaculture research facilities to do research on intensive water recirculating systems (7 U.S.C. 3321–3323).

(lx) Administer a Cooperative Rangeland Research Program (7 U.S.C. 3331–3336).

(lxi) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(lxii) Design and implement educational programs and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland, and designate a

farmland information center, pursuant to section 1544 of the Farmland Protection Policy Act (7 U.S.C. 4205).

(lxiii) Conduct programs of education, extension, and research related to water quality, agrichemicals and nutrient management (7 U.S.C. 5503–5506).

(lxiv) Administer programs and conduct projects for research, extension, and education on sustainable agriculture (7 U.S.C. 5811–5813).

(lxv) Conduct research and cooperative extension programs to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(lxvi) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(lxvii) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(lxviii) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841–5844).

(lxix) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(lxx) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including a competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(lxxi) Administer a research and extension grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(lxxii) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(lxxiii) Administer and conduct research and extension programs on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(lxxiv) Establish a National Pesticide Resistance Monitoring Program and disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(lxxv) Administer and conduct research and grant programs on the control and eradication of exotic pests (7 U.S.C. 5883).

(lxxvi) Conduct research and educational programs to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(lxxvii) Administer research programs and grants for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(lxxviii) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(lxxix) Establish and coordinate USDA grant programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(lxxx) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(lxxxi) Administer a grants program to States on immunoassay as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(lxxxii) Conduct research programs for the development of technology to determine animal lean content (7 U.S.C. 5925).

(lxxxiii) Conduct and support research programs to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(lxxxiv) Administer grants and conduct research programs to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(lxxxv) Administer grants and conduct research programs to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(lxxxvi) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(lxxxvii) Support and conduct basic and applied research in the development of new commercial products from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(lxxxviii) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(lxxxix) Establish an Agricultural Research Facilities Planning and Closure Study Commission to review currently operating and planned facilities, and to develop recommendations (7 U.S.C. 5927).

(xc) Administer research programs to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(xci) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(xcii) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(xciii) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(xciv) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(xcv) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(xcvi) Conduct programs of research, technology development, and education related to global climate change (7 U.S.C. 6701–6710).

(xcvii) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638 (e)–(k)).

(xcviii) Coordinate Departmental policies under the Toxic Substance Control Act (15 U.S.C. 2601–2629).

(xcix) Provide educational and technical assistance in implementing and administering the Conservation Reserve Program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509 (16 U.S.C. 3831–3844)).

(c) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(ci) Coordinate USDA activities delegated under 15 U.S.C. 3710a–3710c.

(cii) Conduct educational and demonstrational work in Cooperative Farm Forestry Programs (16 U.S.C. 568).

(ciii) Cooperate with the States for the purposes of encouraging and assisting them in carrying out programs of forestry, natural resources, and environmental research (16 U.S.C. 582a–8).

(civ) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(cv) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(cvi) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(cvii) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(cviii) Implement and conduct an educational program to assist the development of Urban and Community Forestry Programs (16 U.S.C. 2105).

(cix) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural activities within the Department (16 U.S.C. 2805).

(cx) Perform research, development, and extension activities in aquaculture (16 U.S.C. 2804 and 2806).

(cxi) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(cxii) Copy and deliver on demand selected articles and other materials from the Department's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976, (17 U.S.C. 106, 107, and 108).

(cxiii) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(cxiv) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices or real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(cxv) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(cxvi) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(cxvii) Obtain and furnish Federal excess property to eligible recipients for use in the conduct of research and extension programs (40 U.S.C. 483(d)(2)).

(cxviii) Conduct research demonstration and promotion activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(cxix) Carry out research, demonstration, and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(cxx) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(cxxi) Administer a Cooperative Agricultural Extension Program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(cxxii) Provide leadership and direct assistance in planning, conducting and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(cxxiii) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity in the Cooperative Extension Service (part 18 of this title).

(cxxiv) Represent the Department on the Federal Interagency Council on Education.

(cxxv) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(cxxvi) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA.

(cxxvii) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(cxxviii) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(cxxix) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(cxxx) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews, and other analytical information tools.

(cxxxi) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(cxxxii) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(cxxxiii) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18440, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c), as will ensure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318, *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(cxxxiv) Represent the Department on the Federal Coordinating Council for Science, Engineering, and Technology.

(cxxxv) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(cxxxvi) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a–3710c, with authority to disapprove or require the modification of any such agreement.

(2) *Related to committee management.* Establish or reestablish regional, state and local advisory committees for the activities authorized. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer the responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning scientific and educational programs; estimates of supplies of agricultural commodities and evaluation of requirements therefor; coordination

of damage assessment; food and agricultural aspects of economic stabilization, economic research, and agricultural statistics; and the coordination of energy programs.

(4) *Related to rural development activities.* Provide guidance and direction for the accomplishment of activities authorized under the Rural Development Act of 1972, as amended (7 U.S.C. 1921, *et seq.*), for programs under the control of the Under Secretary for Research, Education, and Economics, coordinating the policy aspects thereof with the Under Secretary for Rural Economic and Community Development.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(7) *Related to national food and human nutrition research.*

(i) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term ''research'' includes:

(A) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(B) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(C) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(ii) The authority in paragraph (a)(7)(i) of this section includes the authority to:

(A) Appraise the nutritive content of the U.S. food supply;

(B) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(C) Coordinate nutrition education research projects within the Department; and

(D) Maintain data generated on food composition in a National Nutrient Data Bank.

(iii) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(A) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(B) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(C) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Conduct a program of nutrition education research.

(v) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Pub. L. No. 101–445, 7 U.S.C. 5301, *et seq*.

(8) *Related to economic research and statistical reporting.* (i) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(ii) Conduct economic and social science research and analyses relating to:

(A) food and agriculture situation and outlook;

(B) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(C) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(D) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(E) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(iii) Perform economic and other social science research under section 104(b) (1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704).

(iv) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 476, 951, and 2204).

(v) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1903, and 2072).

(vi) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(vii) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(viii) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio, and television.

(ix) Coordinate all economic analysis and review all decisions involving substantial economic policy implications.

(x) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global and agricultural system. Such work may be carried out by:

(A) Exchanging research materials and results with the institutions or persons;

(B) Engaging in joint or coordinated research;

(C) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Secretary of Agriculture;

(D) Stationing representatives at such institutions or organizations in foreign countries; or

(E) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Foreign Agricultural Service, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreement to the Secretary of Agriculture (7 U.S.C. 3291(a)).

(xi) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect on family farms and rural communities of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(xii) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(xiii) Enter into cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(9) *Related to energy*. (i) Advise the Secretary and other policy-level officials of the Department on energy policies and programs, including legislative and budget proposals.

(ii) Serve as or designate the Department representative at hearings, conferences, meetings and other contacts with respect to energy and energy-related matters, including liaison with the Department of Energy and other governmental agencies and departments.

(iii) Provide Department leadership in:

(A) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(B) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(C) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(D) Developing agricultural and rural components of national energy policy plans; and

(E) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(iv) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from other departments or agencies of the Federal Government pursuant to interagency agreements.

(v) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(10) *Related to immigration.* Serve as the designee of the Secretary pursuant to section 212(e) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(e) and 22 CFR 514.44(c)).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to science and education.* (i) Withhold funds from States and sending notification thereof to the President in accordance with sections 5 and 6 of the Smith-Lever Act, as amended (7 U.S.C. 345–346), sections 5 and 7 of the Hatch Act, as amended (7 U.S.C. 361(e) and (g)), and sections 1436, 1444, 1445 and 1468 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3198, 3221, 3222 and 3314).

(ii) Reapportion funds under section 4 and apportion funds under section 5 of the Act of October 10, 1962 (16 U.S.C. 582a–3, 582a–5).

(iii) Appoint an advisory committee under section 6 of the Act of October 10, 1962 (16 U.S.C. 582a–4).

(iv) Final concurrence in Equal Employment Opportunity Programs within the cooperative extension programs submitted under part 18 of this title.

(v) Approve selection of State directors of extension.

(vi) Approve the memoranda of understanding between the land-grant universities and USDA related to cooperative extension programs.

(2) *Related to economic research and statistical reporting.* (i) Final approval and issuance of the monthly crop report (7 U.S.C. 411a).

(ii) Final action on rules and regulations for the Agricultural Statistics Board.

§ 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs:

(1) *Related to agricultural marketing.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State Departments of Agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(ii) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(A) Studies of facilities and methods used in physical distribution of food and other farm products;

(B) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(C) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(iii) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(iv) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(v) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(vi) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(vii) Cooperate with other Departmental agencies in the development and recommendation of policies for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(viii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(B) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(C) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(D) Naval Stores Act (7 U.S.C. 91–99);

(E) Tobacco Inspection Act (7 U.S.C. 511–511q);

(F) Wool Standard Act (7 U.S.C. 415b–415d);

(G) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a–608e, 610, 612, 614, 624, 671–674);

(H) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(I) Export Apple and Pear Act (7 U.S.C. 581–590);

(J) Export Grape and Plum Act (7 U.S.C. 591–599);

(K) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(L) Perishable Agricultural Commodities Act (7 U.S.C. 499a–499s);

(M) Produce Agency Act (7 U.S.C. 491–497);

(N) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(O) Tobacco Statistics Act (7 U.S.C. 501–508);

(P) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(Q) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(R) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(S) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(T) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(U) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(V) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xi) and (a)(3)(x);

(W) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(X) Beef Research and Information Act, as amended (7 U.S.C. 2901–2918), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xiv) and (a)(3)(x);

(Y) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(Z) Egg Products Inspection Act relating to the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(AA) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as

supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(BB) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(CC) In carrying out the procurement functions in paragraphs (a)(1)(viii)(AA) and (BB) of this section, the Assistant Secretary for Marketing and Regulatory Programs shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(DD) Act of May 23, 1980, regarding inspection of dairy products for export (21 U.S.C. 693);

(EE) The Pork Promotion, Research and Consumer Information Act of 1985 (7 U.S.C. 4801–4819);

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(HH) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(II) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(JJ) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(KK) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(LL) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(MM) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(NN) Lime Research, Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(OO) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(QQ) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(RR) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(SS) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522), provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(TT) Pesticide Recordkeeping (7 U.S.C. 136i–1) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(UU) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(VV) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(ix) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Assistant Secretary for Marketing and Regulatory Programs, and charge user fees therefor, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(x) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(2) *Related to animal and plant health inspection*. Exercise the functions of the Secretary of Agriculture under the following authorities:

(i) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to represent the Department of Agriculture in interagency consultations and negotiations with other foreign affairs agencies regarding joint regulations, nor the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service;

(ii) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the Gypsy Moth Program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands;

(iii) The Mexican Border Act, as amended (7 U.S.C. 149);

(iv) The Golden Nematode Act (7 U.S.C. 150–150g);

(v) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj);

(vi) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(vii) The Terminal Inspection Act, as amended (7 U.S.C. 166);

(viii) The Honeybee Act, as amended (7 U.S.C. 281–286);

(ix) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656);

(x) Tariff Act of June 17, 1930, as amended, sec. 306 (19 U.S.C. 1306);

(xi) Act of August 30, 1890, as amended (21 U.S.C. 102–105);

(xii) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130);

(xiii) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1);

(xiv) Act of June 16, 1948 (21 U.S.C. 114e–114f);

(xv) Act of September 6, 1961 (21 U.S.C. 114g–114h);

(xvi) Act of July 2, 1962 (21 U.S.C. 134–134h);

(xvii) Act of May 6, 1970 (21 U.S.C. 135–135b);

(xviii) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618);

(xix) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429);

(xx) The responsibilities of the United States under the International Plant Protection Convention;

(xxi) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159);

(xxii) Horse Protection Act (15 U.S.C. 1821–1831);

(xxiii) 28 Hour Law, as amended (45 U.S.C. 71–74);

(xxiv) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902);

(xxv) Purebred Animal Duty Free Entry Provisions of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01);

(xxvi) Virus-Serum-Toxin Act (21 U.S.C. 151–158);

(xxvii) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a);

(xxviii) The Agricultural Marketing Act of 1946, sections 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine;

(xxix) Talmadge Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests;

(xxx) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814);

(xxxi) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544);

(xxxii) Executive Order 11987, 3 CFR, 1977 Comp., p. 116;

(xxxiii) Section 101(d), Organic Act of 1944 (7 U.S.C. 430);

(xxxiv) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813);

(xxxv) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378);

(xxxvi) Title III (and title IV to the extent that it relates to activities under title III,) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610);

(xxxvii) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260);

(xxxviii) The Act of March 2, 1931 (7 U.S.C. 426–426b);

(xxxix) The Act of December 22, 1987 (7 U.S.C. 426c);

(xl) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists of national and international institutions in such countries (7 U.S.C. 3291(a)(3));

(xli) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended;

(xlii) The provisions of 35 U.S.C. 156;

(xliii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c); and

(xliv) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(3) *Related to grain inspection, packers and stockyards.* (i) Exercise the authority of the Secretary of Agriculture contained in the U.S. Grain Standards Act, as amended (7 U.S.C. 71–87h).

(ii) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities relating to grain.

(iii) Administer the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229).

(iv) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1655, 1681–1681t) with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(v) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(6) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and governmental and private organizations. Provided, that with respect to biotechnology matters affecting egg products, the Assistant Secretary shall consult and coordinate activities of Department agencies with the Under Secretary for Food Safety.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect

to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(9) *Related to the Capper-Volstead Act.* Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Relating to agricultural marketing.

(i) Promulgation, with the Secretary of the Treasury of joint regulations under section 402(b) of the Federal Seed Act, as amended (7 U.S.C. 1592(b)).

(ii) Appoint members of the National Dairy Promotion and Research Board established by section 113(b) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4504(b)).

(iii) Appoint members of the National Processor Advertising and Promotion Board established by section 1999H(b)(4) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(b)).

(2) *Related to animal and plant health inspection.* (i) Determination that an emergency or extraordinary emergency exists because of the outbreak of any dangerous, communicable disease of livestock or poultry anywhere in the United States and that such outbreak threatens the livestock or poultry of the United States (21 U.S.C. 114a, 114c, 134a(b)).

(ii) Determination as to the measure and character of cooperation with Canada, Mexico, Central American countries, Panama, and Columbia related to operations and measures to eradicate, suppress, or control or to prevent or retard any communicable disease of animals, the designation of members of advisory committees, and the appointment of commissioners on any joint commission with these governments set up under such programs (21 U.S.C. 114b).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases, and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 665).

(iv) Determination that an extraordinary emergency exists under the criteria in section 105(b)(1) of the Federal Plant Pest Act, as amended, (7 U.S.C. 150dd(b)(1)).

§ 2.23 Assistant Secretary for Congressional Relations.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Congressional Relations:

(1) *Related to congressional affairs.* (i) Exercise responsibility for coordination of all congressional matters in the Department.

(ii) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.

(2) *Related to intergovernmental affairs.* (i) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(A) National Association of State Departments of Agriculture;

(B) Office of Intergovernmental Relations (Office of Vice President);

(C) Advisory Commission on Intergovernmental Relations;

(D) Council of State Governments;

(E) National Governors Conference;

(F) National Association of Counties;

(G) National League of Cities;

(H) International City Managers Association;

(I) U.S. Conference of Mayors; and

(J) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(ii) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(iii) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(iv) Act as the department representative for Federal executive board matters.

(v) Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(3) *Related to Indian affairs.* Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

§ 2.24 Assistant Secretary for Administration.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Administration:

(1) Related to administrative law judges. (i) Assign, after appropriate consultation with other general officers, to the Office of Administrative Law Judges proceedings not subject to 5 U.S.C. 556 and 557, involving the holdings of hearings and performance of related duties pursuant to the applicable rules of practice, when the Assistant

Secretary for Administration determines that because of the nature of the proceeding it would be desirable for the proceeding to be presided over by an Administrative Law Judge and that such duties and responsibilities would not be inconsistent with those of an Administrative Law Judge.

(ii) Provide administrative supervision of the Office of Administrative Law Judges.

(iii) Maintain overall responsibility and control over the Hearing Clerk's activities which include the custody of and responsibility for the control, maintenance, and servicing of the original and permanent records of all USDA administrative proceedings conducted under the provisions of 5 U.S.C 556 and 557:

(A) Receiving, filing and acknowledging the receipt of complaints, petitions, answers, briefs, arguments, and all other documents that may be submitted to the Secretary or the Department of Agriculture in such proceedings;

(B) Receiving and filing complaints, notices of inquiry, orders to show cause, notices of hearing, designations of Administrative Law Judges or presiding officers, answers, briefs, arguments, orders, and all other documents that may be promulgated or issued by the Secretary or other duly authorized officials of the Department of Agriculture in such proceedings;

(C) Supervising the service upon the parties concerned of any documents that are required to be served, and where required, preserving proof of service;

(D) Keeping a docket record of all such documents and proceedings;

(E) Filing a stenographic record of each administrative hearing;

(F) Preparing for certification and certifying under the Secretary's facsimile signature, material on file in the Hearing Clerk's office;

(G) Performing any other clerical duties with respect to the documents relative to such proceedings as may be required to be performed;

(H) Cooperating with the Office of Operations in the letting of contracts for stenographic and reporting services; and forwarding vouchers to appropriate agencies for payment;

(I) Receiving and compiling data, views or comments filed in response to notices of proposed standards or rules or regulations; and

(J) Performing upon request the following services with respect to any hearings in such proceedings:

(*1*) Arranging for suitable hearing place; and

(*2*) Arranging for stenographic reporting of hearings and handling details in connection therewith.

(2) *Related to management.* (i) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, Comp., p. 246, and other policy and procedural directives and laws to:

(A) Assess and improve productivity of the Department; and

(B) Assist agencies in developing, implementing and maintaining productivity measurement systems.

(ii) Responsible for the Modernization of Administrative Processes project to analyze and make recommendations to the Secretary regarding improved processes with respect to administrative and financial activities of the Department.

(iii) Designate the Department's Chief Management Improvement Officer.

(iv) Improve Departmental management by: Performing management studies and reviews in response to agency requests for assistance; enhancing management decisionmaking by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(v) Administer the Department's Management Improvement Program including the provision of assistance to agencies through management studies and planning review; review the management and operating policies and processes; search for more economical approaches to the conduct of business and provide such other assistance as will aid in improving the management effectiveness and operation of the Department's programs.

(vi) Administer the Department's Management Review Program. This authority includes the development and promulgation of departmental directives regulating the management review function.

(vii) Develop, design, install, and revise systems, processes, work methods, and techniques, and undertake other system engineering efforts to improve the management and operational effectiveness of the USDA.

(3) *Related to operations.* (i) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(B) Socioeconomic programs relating to contracting, except matters otherwise assigned;

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(E) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(F) Mail management;

(G) Motor vehicle fleet and other vehicular transportation;

(H) Transportation of things (traffic management);

(I) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(J) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601, *et seq.*) and

(K) Develop and implement energy management actions related to the internal operations of the Department. Maintain liaison with other government agencies in these matters.

(ii) Operate, or provide for the operation of, centralized Departmental services for printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(iii) Exercise the following special authorities:

(A) Designate the Department's Debarring Officer to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(B) Conduct liaison with the Office of the Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(C) Maintain custody and permit appropriate use of the official seal of the Department;

(D) Establish policy for the use of the official flags of the Secretary and the Department;

(E) Coordinate collection of historical material for Presidential Libraries;

(F) Oversee the safeguarding of unclassified materials designated ''For Official Use Only;''

(G) Make determinations under 48 CFR 14.406–3(a) through (d), relating to mistakes in bids alleged after opening of bids and before award; and

(H) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election by 26 CFR 1.6050M–1(d)(5)(i).

(iv) Exercise full Departmentwide contracting and procurement authority for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies. This includes the promulgation of Department directives regulating the management or related contracting and procurement functions.

(v) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(vi) Represent the Department in contacts with the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(vii) Serve as the Acquisition Executive in USDA to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions. This delegation includes the authority to:

(A) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(B) Review the program management of each major system acquisition;

(C) Designate the program manager for each major system acquisition; and

(D) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(viii) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, designate a Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

(E) Evaluating and monitoring the performance of the Department's procurement system;

(F) Managing and enhancing career development of the procurement work force;

(G) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(H) Determining areas of Department-unique standards and developing unique Department-wide standards;

(I) Certifying to the Secretary that the procurement system meets approved standards;

(J) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(K) Redelegating, as appropriate, the authority in paragraph (a)(3)(viii)(A) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(L) Redelegating the authorities in paragraphs (a)(3)(viii)(B), (C), (D), (F) and (G) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(ix) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(x) Review and approve exemptions for Department of Agriculture contracts, subcontracts, grants, subgrants, agreements, subagreements, loans and subloans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in the above acts and Executive Order and the regulations of the Environmental Protection Act (40 CFR 15.5(c)).

(4) *Related to management services.* (i) Provide management support services for the Secretary of Agriculture and for the general officers of the Department, except the Inspector General. As used herein, such management support services shall include:

(A) Personnel services, as listed in paragraph (a)(5)(x) of this section, and organizational support services, with authority to take actions required by law or regulation to perform such services;

(B) Procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services; and

(C) Automation, forms management, files management, and directives management with authority to take actions required by law or regulation to perform such services.

(ii) Provide such of the above services listed in paragraph (a)(4)(i) of this section, as may be agreed, for other officers and agencies of the Department.

(5) *Related to personnel.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to personnel.

(ii) Provide personnel management procedural guidance and operational instructions.

(iii) Design and establish personnel data systems.

(iv) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(v) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in personnel matters.

(vii) Represent the Department in personnel matters in all contacts outside the Department.

(viii) Exercise specific authorities in the following operational matters:

(A) Authorize cash awards above $2,500;

(B) Waive repayment of training expenses where employee fails to fulfill service agreement;

(C) Establish or change standards and plans for awards to private citizens; and

(D) Execute, change, extend, or renew:

(*1*) Labor-Management Agreements; and

(*2*) Association of Management Officials or Supervisor's Agreements.

(E) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(F) Change a position (with no material change in duties) from GS to a

pay system other than a wage system, or vice versa;

(G) Grant restoration rights, and release employees with administrative reemployment rights;

(H) Change working hours for groups of 50 or more employees in the Washington, D.C., metropolitan area;

(I) Authorize any mass dismissals of employees in the Washington, D.C., metropolitan area;

(J) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in-grade criteria;

(K) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(*1*) Was involved directly in the adverse action, or performance rating appeal; or

(*2*) Made the informal decision; or

(*3*) Determines that the Examiner's findings or Committee's recommendations are unacceptable.

(L) Make the final decision on all classification appeals from agency appellate decisions;

(M) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(N) Authorize all employment actions (except LWOP) for the following positions:

(*1*) Schedule C; and

(*2*) Administrative law judge.

(O) Authorize employment actions (accessions or extensions) for the following:

(*1*) Employees whose records are flagged; and

(*2*) Contract services.

(P) Authorize employment actions (accessions or extensions and transfers) for the following:

(*1*) Persons with criminal or immoral records;

(*2*) Persons separated for misconduct, delinquency, or resignation, to avoid such action; and

(*3*) Veterans with dishonorable or other than dishonorable discharge.

(Q) Authorize adverse actions for positions in GS–14–15 and equivalent;

(R) Approve assignments of White House details;

(S) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(T) Authorize long-term training in programs which require Department-wide competition;

(U) Issue all Coordinated Federal Wage System (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, D.C. metropolitan area; and

(V) Initiate and take adverse action in cases involving a violation of the merit system.

(ix) [Reserved]

(x) As used herein, the term personnel includes:

(A) Position management;

(B) Position classification;

(C) Employment;

(D) Pay administration;

(E) Automation of personnel data and systems design;

(F) Hours of duty;

(G) Performance evaluation and standards;

(H) Promotions;

(I) Employee development;

(J) Incentive Programs;

(K) Leave;

(L) Retirement;

(M) Program evaluation;

(N) Social security;

(O) Life insurance;

(P) Health benefits;

(Q) Unemployment compensation;

(R) Labor management relations;

(S) Intramanagement consultation;

(T) Security;

(U) Discipline; and

(V) Appeals.

(xi) The provisions of paragraphs (a)(5)(x)(N)–(R) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(xii) Maintain, review and update departmental delegations of authority.

(xiii) Authorize organizational changes which occur in:

(A) Departmental organizations:

(*1*) Service or office;

(*2*) Division (or comparable component); and

(*3*) Branch (or comparable component in departmental centers, only).

(B) Field organizations:

(*1*) First organizational level; and

(*2*) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental Regulation 1010–1.

(xiv) Formulate and promulgate departmental organizational objectives and policies.

(xv) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xvi) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(xvii) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(xviii) Determine and/or provide Departmentwide technical services and regional staff support for the Safety and Health Programs.

(xix) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's Occupational Safety and Health Programs.

(xx) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(xxi) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(xxii) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(xxiii) Approve hazard pay differentials under the conditions specified in 5 CFR part 550.

(6) *Related to information resources management.* (i) Designated as the senior official to carry out the responsibilities of the Department under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This designation includes the following responsibilities:

(A) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department;

(B) Developing Department information policies and procedures and overseeing, auditing and otherwise periodically reviewing the Department's information resources management activities;

(C) Reviewing proposed Department reporting and recordkeeping requirements including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department;

(D) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs;

(E) Conducting and being accountable for acquisitions made by the Department pursuant to authority delegated under section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759);

(F) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), including the review of Department information activities; and

(G) Reviewing, granting, and notifying Congress of waivers to Federal Information Processing Standards pursuant to the authority delegated under section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(ii) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(iii) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(iv) Provide Departmentwide guidance and direction in all aspects of the USDA Information Management Program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(v) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(vi) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(vii) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(viii) Administer the Departmental records, forms, reports, and Directives Management Programs.

(ix) Manage all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(x) Implement a program for applying information resources management technology to improve productivity in the Department.

(xi) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(xii) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(xiii) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(xiv) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(xv) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(7) *Related to committee management.* (i) Serve as the Department's Committee Management Officer and establish and maintain departmentwide policies and procedures for the management of committees. This delegation includes the authority to:

(A) Consult with the Committee Management Secretariat prior to the establishment or reestablishment of advisory committees;

(B) Approve and sign the written certification that creation of the advisory committee is in the public interest and provide for the publication of such certification in the **Federal Register**, along with a description of the nature and purpose of the advisory committee, following the Committee Management Secretariat's approval of the establishment of the committee;

(C) Approve and sign the notice of renewal of advisory committees for publication in the **Federal Register**, following the Committee Management Secretariat's concurrence in the renewal of the committees;

(D) Assign responsibility for preparation of timely notice of meetings for publication in the **Federal Register**; and

(E) Approve charters for national advisory committees when in a format other than a Secretary's Memorandum.

(ii) Establish and reestablish regional, State, and local advisory committees for activities authorized. This authority may not be redelegated.

(8) *Related to equal opportunity.* (i) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(A) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs;

(B) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(C) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(D) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(E) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(F) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(G) Actions to develop and implement the Department's Federal Women's Program; and

(H) Actions to develop and implement the Department's Hispanic Employment Program.

(ii) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(iii) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(iv) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(v) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vi) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(vii) Order proceedings and hearings in the USDA pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(viii) Order proceedings and hearings in the USDA pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(ix) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(x) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(xi) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(xii) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make determinations, on both the merits and required corrective action, as to complaints filed under subpart B of part 15 of this title.

(xiii) Conduct investigations and compliance reviews Departmentwide.

(xiv) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(xv) Provide liaison on Equal Employment Opportunity Programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(xvi) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(xvii) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1613, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity, and the authority to make decisions on complaints of discrimination and order such corrective measures as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(xviii) Administer the Department's Equal Employment Opportunity Program.

(xix) Perform the EEO counseling function for the Department.

(xx) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(xxi) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, Office of Personnel Management or other outside authority.

(xxii) Provide liaison on EEO matters concerning complaints and appeals with the USDA agencies and Department employees.

(xxiii) Maintain liaison with historically black colleges and universities and with other colleges and universities with substantial minority group enrollment, and assist USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(xxiv) Investigate USDA EEO complaints with authority to enter into and administer contracts for such investigations.

(xxv) Make final decisions on complaints and grievance appeals, except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(xxvi) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(A) Was involved directly in the grievance; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xxvii) The provisions of paragraphs (a)(8) (xxv) and (xxvi) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(9) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(10) *Related to board of contract appeals.* Provide administrative supervision, and exercise general responsibility for budget and finance aspects of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(11) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3

CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(13) *Related to emergency programs.* (i) Coordinate the Department's Emergency Preparedness Program and Disaster Emergency Response Program including maintenance of an appropriate system whereby the Department can react immediately when notified of a civil defense or natural disaster emergency.

(ii) Maintain an overview of emergency relocation facilities and assure that resources are in a constant state of readiness.

(iii) Direct the entire defense program of USDA. This delegation includes:

(A) Maintaining liaison with executive departments and the Congress with respect to policy matters;

(B) Supervising and directing USDA regional emergency stalls and USDA State and county emergency boards;

(C) Directing the USDA part of the National Defense Executive Reserve Program;

(D) Providing policy guidance to USDA agencies in carrying out specific defense assignments; and

(E) Representing the Department in matters relating to international defense organizations, such as NATO and its suborganizations.

(iv) Coordinate and facilitate USDA operations of Natural Disaster Programs, including liaison with executive departments and the Congress in disaster matters.

(v) Maintain liaison with:

(A) Federal Preparedness Agency; and

(B) Defense Civil Preparedness Agency.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Related to personnel. Make final determinations in the following areas:

(i) Separation of employees for security reasons.

(ii) Restoration to duty of employees following suspension from duty for security reasons.

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons.

(iv) Issuance of temporary certificates to occupy sensitive positions.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

§ 2.26 Director, Office of the Executive Secretariat.

The following delegation of authority is made by the Secretary of Agriculture to the Director, Office of the Executive Secretariat: Responsible for all correspondence control and related records management functions for the Office of the Secretary.

§ 2.27 Office of Administrative Law Judges.

(a) The following designations are made by the Secretary of Agriculture to the Office of Administrative Law Judges:

(1) Administrative law judges (formerly hearing examiners) are designated pursuant to 5 U.S.C. 556(b)(3) to hold hearings and perform

related duties in proceedings subject to 5 U.S.C. 556 and 557, arising under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, *et seq.*); the Commodity Exchange Act as amended (7 U.S.C. 1, *et seq.*); the Perishable Agricultural Commodities Act, as amended (7 U.S.C. 499a, *et seq.*); the Federal Seed Act, as amended (7 U.S.C. 1551, *et seq.*); the (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131, *et seq.*); the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181, *et seq.*); the Forest Resources Conservation and Shortage Relief of 1990 (16 U.S.C. 630, *et seq.*); and any other acts providing for hearings to which the provisions of 5 U.S.C. 556 and 557, are applicable. Pursuant to the applicable rules of practice, the administrative law judges shall make initial decisions in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Such decisions shall become final without further proceedings unless there is an appeal to the Secretary by a party to the proceeding in accordance with the applicable rules of practice: Provided, however, that no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. As used herein, ''Secretary'' means the Secretary of Agriculture, the Judicial Officer, or other officer or employee of the Department delegated, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c-450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), ''regulatory functions'' as that term is defined in the 1940 Act, in acting as final deciding officer in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Administrative Law Judges are delegated authority to hold hearings and perform related duties as provided in the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, set forth in part 1, subpart I of this title.

(b) The Chief Administrative Law Judge is delegated the following administrative responsibilities subject to the guidance and control of the Assistant Secretary for Administration (See § 2.24(a)):

(1) Exercise general responsibility and authority for all matters related to the administrative activities of the Office of Administrative Law Judges; and

(2) Direct the functions of the Hearing Clerk as set out in § 2.24(a)(1)(iii).

§ 2.28 Chief Financial Officer.

(a) The Chief Financial Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated for agency Chief Financial Officers in the Chief Financial Officers Act of 1990, Public Law No. 101–576, 31 U.S.C. 902, including:

(1) Reporting directly to the Secretary of Agriculture regarding financial management matters and the financial execution of the budget.

(2) Overseeing all financial management activities relating to the programs and operations of the Department and component agencies.

(3) Developing and maintaining an integrated accounting and financial system for the Department and component agencies, including financial reporting and internal controls, which—

(i) Complies with applicable accounting principles, standards, and requirements, and internal control standards;

(ii) Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;

(iii) Complies with any other requirements applicable to such systems; and

(iv) Provides for complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of Department management and for the development and reporting of cost information, the integration of accounting and budgeting information, and the systematic measurement of performance.

(4) Making recommendations to the Secretary regarding the selection of the Deputy Chief Financial Officer of the Department, and selection of principal financial officers of component agencies of the Department.

(5) Directing, managing, and providing policy guidance and oversight of Department financial management personnel, activities, and operations, including:

(i) Preparing and annually revising a Departmental plan to:

(A) Implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under 31 U.S.C. 3512(a)(3); and

(B) Comply with the requirements established for agency financial statements under 31 U.S.C. 3515 and with the requirements for audits of Department financial statements established in subsections (e) and (f) of section 31 U.S.C. 3521(e) and (f).

(ii) Developing Departmental financial management budgets, including the oversight and recommendation of approval of component agency financial management budgets;

(iii) Recruiting, selecting, and training of personnel to carry out Departmental financial management functions;

(iv) Approving and managing Departmental, and approving component agency, financial management systems design or enhancement projects; and

(v) Implementing and approving Departmental, and approving component agency, asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control.

(6) Preparing and transmitting, by not later than 60 days after the submission of the audit report required by 31 U.S.C. 3521(f), an annual report to the Secretary and the Director of the Office of Management and Budget, which shall include:

(i) A description and analysis of the status of financial management of the Department;

(ii) The annual financial statements prepared under 31 U.S.C. 3521;

(iii) The audit report transmitted to the Secretary under 31 U.S.C. 3521;

(iv) A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 1113, 3512); and

(v) Other information the Secretary considers appropriate to inform fully the President and the Congress concerning the financial management of the Department.

(7) Monitoring the financial execution of the budget of the Department in relation to projected and actual expenditures, and preparing and submitting to the Secretary timely performance reports.

(8) Reviewing, on a biennial basis, the fees, royalties, rent, and other charges imposed by the Department for services and things of value it produces, and making recommendations on revising those charges to reflect costs incurred by the Department in providing those services and things of value.

(9) Accessing all records, reports, audits, reviews, documents, papers, recommendations, or other material that are the property of the Department or that are available to the Department, and that relate to programs and operations with respect to which the Chief Financial Officer has responsibilities, except that this grant allows no access greater than that permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of the Office of Inspector General.

(10) Requesting such information or assistance as may be necessary for carrying out the duties and

responsibilities granted the Chief Financial Officer by the Chief Financial Officers Act of 1990 (Pub. L. No. 101–576), from any Federal, State, or local governmental entity.

(11) To the extent and in such amounts as may be provided in advance by appropriations acts, entering into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services, and making such payments as may be necessary to carry out the duties and prerogatives of the Chief Financial Officer.

(b) In addition to the above responsibilities, the following delegations of authority are made by the Secretary of Agriculture to the Chief Financial Officer:

(1) Designate the Department's Director of Finance and Comptroller of the Department Working Capital Fund.

(2) Establish Departmental policies, standards, techniques, and procedures applicable to all USDA agencies for the following areas:

(i) Development, maintenance, review and approval of all departmental, and review and approval of component agency, internal control, fiscal, financial management and accounting systems including the financial aspects of payroll and property systems;

(ii) Selection, standardization, and simplification of program delivery processes utilizing grants, cooperative agreements and other forms of Federal assistance;

(iii) Review and approval of Federal assistance, internal control, fiscal, accounting and financial management regulations and instructions proposed or issued by USDA agencies for conformity with Departmental requirements; and

(iv) Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(3) Establish policies related to the Department Working Capital Fund.

(4) Approve regulations, procedures and rates for goods and services financed through the Department Working Capital Fund which will impact the financial administration of the Fund.

(5) Exercise responsibility and authority for operating USDA's Central Accounting System and related administrative systems including:

(i) Management of the National Finance Center (NFC), which includes developing, maintaining, and operating manual and automated administrative and accounting systems for the USDA agencies related to the Central Accounting System, Departmentwide payroll and personnel information, statistics, administrative payments, billings and collections, and related reporting systems that are either requested by the agencies or required by the Department;

(ii) Management of the NFC automated data processing and telecommunications systems and coordination with the Office of Information Resources Management to assure that the hardware and software located at the NFC will be integrated with and compatible with all other systems;

(iii) Develop new or modified accounting systems and documentation supporting the Central Accounting System which includes working with USDA agencies to obtain General Accounting Office approval; and

(iv) Review and approve the issuance of accounting and management instructions related to the operation of the NFC.

(6) Provide management support services for the NFC, and by agreement with agency heads concerned, provide such services for other USDA tenants housed in the same facility. As used herein, such management support services shall include:

(i) Personnel services, as listed in § 2.24(a)(5)(x), and organizational support services, with authority to take actions required by law or regulation to perform such services; and

(ii) Procurement, property management, space management, communications, messenger, paperwork management, and related administrative services, with authority to take actions required by law or regulation to perform such services.

(7) Exercise responsibility and authority for all matters related to the Department's accounting and financial operations including such activities as:

(i) Financial administration, including accounting and related activities;

(ii) Reviewing financial aspects of agency operations and proposals;

(iii) Furnishing consulting services to agencies to assist them in developing and maintaining accounting and financial management systems and internal controls, and for other purposes consistent with delegations in paragraph (b)(2) of this section;

(iv) Reviewing and monitoring agency implementation of Federal assistance policies;

(v) Reviewing and approving agencies' accounting systems documentation including related development plans, activities, and controls;

(vi) Monitoring agencies' progress in developing and revising accounting and financial management systems and internal controls;

(vii) Evaluating agencies' financial systems to determine the effectiveness of procedures employed, compliance with regulations, and the appropriateness of policies and practices;

(viii) Promulgation of Department schedule of fees and charges for reproductions, furnishing of copies and making searches for official records pursuant to the Freedom of Information Act, 5 U.S.C. 552; and

(ix) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(8) Establish Department and approve component agency programs, policies, standards, systems, techniques and procedures to improve the management and operational efficiency and effectiveness of the USDA including:

(i) Implementation of the policies and procedures set forth in OMB Circulars No. A–76: Performance of Commercial Activities, and No. A–117: Management Improvement and the Use of Evaluation in the Executive Branch;

(ii) Increased use of operations research and management science in the areas of productivity and management; and

(iii) All activities financed through the Department Working Capital Fund.

(9) Designate the Commercial Industrial Officer for USDA.

(10) Develop Departmental policies, standards, techniques, and procedures for the conduct of reviews and analysis of the utilization of the resources of State and local governments, other Federal agencies and of the private sector in domestic program operations.

(11) Represent the Department in contacts with the Office of Management and Budget, General Services Administration, General Accounting Office, Department of the Treasury, Office of Personnel Management, Department of Health and Human Services, Department of Labor, Environmental Protection Agency, Department of Commerce, Congress of the United States, State and local governments, universities, and other public and private sector individuals, organizations or agencies on matters related to assigned responsibilities.

(12) Maintain the Departmental inventory of commercial activities required by OMB Circular No. A–76 and provide Departmentwide technical assistance to accomplish Circular objectives.

(13) Establish policies related to travel by USDA employees.

(14) Exercise responsibility for coordinating and overseeing the implementation of the Government Performance and Results Act of 1993, Pub. L. No. 103–62, at the Department.

(15) Exercise responsibility for design, implementation, and oversight of the Department's project known as Financial Information Systems Vision, and approval of the design and implementation of an integrated financial information and management system for the Department and all component agencies.

§ 2.29 Chief Economist.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Chief Economist:

(1) *Related to economic analysis.*

(i) Coordinate economic analyses of, and review Department decisions involving, policies and programs that have substantial economic implications.

(ii) Review and assess the economic impact of all significant regulations proposed by any agency of the Department.

(iii) Review economic data and analyses used in speeches and Congressional testimony by Department personnel and in materials prepared for release through the press, radio, and television.

(2) *Related to risk assessment.*

(i) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the Federal Register as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e).

(ii) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(3) *Related to food and agriculture outlook and situation.*

(i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(4) *Related to weather and climate.*

(i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(5) *Related to interagency commodity estimates committees.*

(i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(6) *Related to remote sensing.*

(i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(7) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(8) *Related to agricultural labor affairs.* Exercise the following functions of the Secretary under the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1101, *et seq.*):

(i) Pursuant to section 214(c) of INA (8 U.S.C. 1184(c)), provide consultation to the Attorney General and the Secretary of Labor concerning the question of the importation of aliens as nonimmigrant temporary agricultural workers, known as ''H–2A'' workers, under 8 U.S.C. 1101(a)(15)(H)(ii)(a);

(ii) Pursuant to section 218(e) of the INA (8 U.S.C. 1188 note), provide consultation to the Attorney General and the Secretary of Labor concerning all regulations to implement 8 U.S.C. 101(a)(15)(H)(ii)(a) and 1188 providing for the importation of H–2A workers;

(iii) Pursuant to section 210(h) of the INA (8 U.S.C. 1160(h)), promulgate regulations to define ''seasonal agricultural services'' for purposes of the Special Agricultural Worker (SAW) Program;

(iv) Pursuant to section 210A(a) of the INA (8 U.S.C. 1161(a)), determine jointly with the Secretary of Labor the number (if any) of additional special agricultural workers, known as ''replenishment agricultural workers'' (RAWs), who should be admitted to the United States or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 to meet a shortage of workers to perform seasonal agricultural services in the United States during each such fiscal year;

(v) Pursuant to section 210A(a)(7) of the INA (8 U.S.C. 1161(a)(7)), determine jointly with the Secretary of Labor emergency requests to increase the shortage number;

(vi) Pursuant to section 210A(a)(8) of the INA (8 U.S.C. 1161(a)(8)), determine jointly with the Secretary of Labor requests to decrease the number of man-days of seasonal agricultural services required of RAWs to avoid deportation and for naturalization under section

210A(d)(5)(A) and (B) of the INA (8 U.S.C. 1161(d)(5)(A) and (B));

(vii) Pursuant to section 210A(b)(1) of the INA (8 U.S.C. 1161(b)(1)), calculate jointly with the Secretary of Labor and annual numerical limitation on the number of RAWs who may be admitted or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 under section 210A(c)(1) of the INA (8 U.S.C. 1161(c)(1)); and

(viii) Pursuant to section 210A(b)(2) of the INA (8 U.S.C. 1161(b)(2)), establish jointly with the Secretary of Labor the information that must be reported by any person or entity who employs SAWs or RAWs in seasonal agricultural services during fiscal years 1989 through 1992, and to designate jointly with the Secretary of Labor the official to whom the person or entity must furnish such certification.

(9) *Related to the Capper-Volstead Act.* Serve as Chairman of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade. The Chairman is authorized to call upon any agency of the Department for support in carrying the functions of the Committee (7 U.S.C. 292).

(10) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

§ 2.30 Director, Office of Budget and Program Analysis.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Director, Office of Budget and Program Analysis:

(1) Serve as the Department's Budget Officer and exercise general responsibility and authority for all matters related to the Department's budgeting affairs including:

(i) Resource administration, including all phases of the acquisition, and distribution of funds and staff years; and

(ii) Legislative and regulatory reporting and related activities.

(2) Provide staff assistance for the Secretary, general officers, and other Department and agency officials.

(3) Formulate and promulgate Departmental budgetary, legislative and regulatory policies and procedures.

(4) Represent the Department in contacts with the Office of Management and Budget, the General Accounting Office, the Treasury Department, Congressional Committees on Appropriations, and other organizations and agencies on matters related to his or her responsibility.

(5) Coordinate and/or conduct policy and program analyses on agency operations and proposals to assist the Secretary, general officers and other Department and agency officials in formulating and implementing USDA policies and programs.

(6) Review and analyze legislation, regulations, and policy options to determine their impact on USDA programs and policy objectives and on the Department's budget.

(7) Monitor ongoing studies with significant program or policy implications.

(b) The following authority is reserved to the Secretary of Agriculture: Final approval of the Department's program and financial plans.

§ 2.31 General Counsel.

The General Counsel, as the chief law officer of the Department, is legal adviser to the Secretary and other officials of the Department and responsible for providing legal services for all the activities of the Department. The delegations of authority by the Secretary of Agriculture to the General Counsel include the following:

(a) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and the regulations of the Attorney General contained in 28 CFR part 14.

(b) Certify documents as true copies of those on file in the Department.

(c) Sign releases of claims of the United States against private persons for damage to or destruction of property of the department, except those claims cognizable under the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

(d) Responsible for the overall management and operation of the Law Library, furnishing complete legal and legislative library services to the Office of the General Counsel and the Department.

(e) Make determinations as to whether employees of the Department may retain commercial rights in inventions; prepare patent applications and prosecute the same before the Patent Office.

(f) Represent the Department in formal rulemaking and adjudicatory proceedings held in connection with the administration of the Department's activities, and decide whether initial decisions of the administrative law judges shall be appealed by the Department to the Secretary.

(g) Represent the Department in connection with legal issues that arise in its relations with the Congress, the General Accounting Office, or other agencies of the Government.

(h) Represent the Department in proceedings before the Interstate Commerce Commission involving freight rates on farm commodities, and in appeals from decisions of the Commission to the courts.

(i) In civil actions arising out of the activities of the Department, present the Department's case to the Attorney General and U.S. attorneys and, upon request of the Department of Justice, assist in the preparation and trial of such cases and in the briefing and argument of such cases at the appellate level.

(j) Review cases having criminal aspects and refer them to the Department of Justice.

(k) Act as liaison between the Department and the Department of Justice.

(l) Perform the following legal services:

(1) Render legal opinions on questions arising in the conduct of the Department's activities;

(2) Prepare or review regulations;

(3) Draft proposed legislation;

(4) Prepare or review contracts, mortgages, deeds, leases, and other documents; and

(5) Examine titles to land to be acquired or accepted as security for loans.

(m) Perform such other legal services as may be required in the administration of the Department's activities, including the defense program.

(n) Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(o) Settle claims for damage to, or loss of, privately owned property pursuant to the provisions of 31 U.S.C. 3723.

§ 2.32 Alternative Agricultural Research and Commercialization Board.

The following delegation of authority is made by the Secretary of Agriculture to the Alternative Agricultural Research and Commercialization Board: Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

§ 2.33 Inspector General.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Inspector General:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) Provide for the personal security of the Secretary and the Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the General Accounting Office.

(4) In addition to the above delegations of authority, the Inspector General, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to the Inspector General Act of 1978, Pub. L. No. 95–452, 5 U.S.C. App.

(b) The following authority is reserved to the Secretary of Agriculture: Approving the implementation in the Office of Inspector General of administrative policies or procedures that contravene standard USDA administrative policies as promulgated by the Assistant Secretary for Administration.

§ 2.34 Director, National Appeals Division.

The Director, National Appeals Division, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to subtitle H of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, title II (7 U.S.C. 6991, *et seq.*), including:

(a) Deciding appeals from adverse decisions, made by an officer or employee of an agency of the Department designated by the Secretary, that are adverse to participants. The term ''agency'' shall include the following and any predecessor agency: the Farm Service Agency; the Commodity Credit Corporation (with respect to domestic programs); the Federal Crop Insurance Corporation; the Rural Housing and Community Development Service; the Rural Business and Cooperative Development Service; the Natural Resources Conservation Service; and a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and

(b) The authority to appoint such hearing officers and other employees as are necessary for the administration of the activities of the Division.

§ 2.35 Judicial Officer.

The following delegations of authority are made by the Secretary of Agriculture to the Judicial Officer: Pursuant to the provisions of the Act of April 4, 1940 (7 U.S.C. 450c- 450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), the Judicial Officer is hereby authorized to act as final deciding officer in adjudication proceedings subject to 5 U.S.C. 556 and 557; in other adjudication proceedings which are or may be made subject to the ''Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes'' set forth in part 1, subpart H of this title; in adjudication proceedings under the ''Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act'' set forth in part 1, subpart I of this title; in rate proceedings under the Packers and Stockyards Act; in adjudication proceedings under the ''Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986'' set forth in part 1, subpart L of this title; in adjudication proceedings subject to the ''Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)'' set forth in part 1, subpart M of this title; and in reparation proceedings under statutes administered by the Department. As used herein the term ''Judicial Officer'' shall mean any person or persons so designated by the Secretary of Agriculture. The provisions of this delegation shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those defined in the said Act of April 4, 1940, which from time to time may be assigned by the Secretary to him or her.

§ 2.36 Director, Office of Communications.

(a) *Delegations.* The following delegations of authority are made by the Secretary of Agriculture to Director, Office of Communications:

(1) *Related to public affairs.*

(i) Advise and counsel general officers on public affairs matters to the Department.

(ii) Organize and direct the activities of a public affairs office to include press relations of the secretary of agriculture and other executive functions and services for general officers of the Department.

(2) *Related to information activities.*

(i) Advise the secretary and general officers in the planning, development, and execution of Department policies and programs.

(ii) Direct and coordinate the overall formulation and development of policies, programs, plans, procedures, standards and organization structures and staffing patterns for the information activities of the Department and its agencies, both in Washington and in the field.

(iii) Exercise final review and approval of all public information material prepared by the Department and its agencies and select the most effective method and audience for distributing this information.

(iv) Serve as the central public information authority in the USDA, with the authority to determine policy for all USDA communication activities and agency information activities in order to provide leadership and centralized operational direction for USDA and agency information activities so that all material shall effectively support USDA policies and programs, including the defense program.

(v) Serve as the central printing authority in the USDA, with authority to represent the USDA with Joint Committee on Printing of the Congress, the Government Printing Office, and other Federal and State agencies on information matters.

(vi) Cooperate with and secure the cooperation of commercial, industrial and other nongovernmental agencies and concerns regarding information work as required in the execution of the Department's programs.

(vii) Plan and direct communication research and training for the Department and its agencies.

(viii) Oversee general officers and agency heads in the development and implementation of information policies issued pursuant to the provisions of the ''Freedom of Information Act'' (5 U.S.C. 552) and the ''Privacy Act'' (5 U.S.C. 552a), and provide consultation regarding those policies.

(ix) Supervise and provide leadership and final clearance for the planning, production, and distribution of visual information material for the department and its agencies in Washington, D.C., and the field, and provide such information services as may be deemed necessary.

(x) Maintain overall responsibility and control over the preparation of the ''Agricultural Decisions.''

(xi) Administer, direct and coordinate publications and user fee authority granted under section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a; and publish any appropriate regulations necessary to the exercise of this authority.

(b) [Reserved]

Subpart E—Delegations of Authority by the Deputy Secretary

§ 2.37 Director, Office of Small and Disadvantaged Business Utilization.

(a) *Delegations.* Pursuant to § 2.15, the following delegations of authority are made by the Deputy Secretary to the Director, Office of Small and Disadvantaged Business Utilization:

(1) The Director, Office of Small and Disadvantaged Business Utilization, under the supervision of the Deputy Secretary, has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(i) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority business, including women-owned business, Labor Surplus Area concerns, and the small business and small minority business subcontracting programs;

(ii) Providing Departmentwide liaison and coordination of activities related to small and disadvantaged business with the Small Business Administration and others in the public and private sector;

(iii) Developing policies and procedures required by the applicable provisions of the Small Business Act, as amended to include the establishment of goals; and

(iv) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(2) In addition to the responsibilities in paragraph (a)(1) of this section, the following delegations of authority are made by the Deputy Secretary of Agriculture to the Director, Office of Small and Disadvantaged Business Utilization:

(i) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), is designated as the Department's Advocate for Competition with responsibility for sections 20 and 21 of the Act (41 U.S.C. 418 and 418a), including:

(A) Reviewing the procurement activities of the Department;

(B) Developing new initiatives to increase full and open competition;

(C) Developing goals and plans and recommending actions to increase competition;

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(E) Designating an Advocate for Competition for each procuring activity within the Department; and

(F) Preparing the annual report to the Congress for transmittal by the Secretary on activities of the Advocate for Competition.

(b) [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.

Pursuant to § 2.16(a), subject to reservations in § 2.16(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Farm and Foreign Agricultural Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services: Provided, that this authority shall be exercised by the respective Deputy Under Secretary in the order in which he or she has taken office as a Deputy Under Secretary.

§ 2.42 Administrator, Farm Service Agency.

(a) *Delegations.* Pursuant to § 2.16(a)(1) through (a)(4) and (a)(6) through (a)(8), subject to the reservations in § 2.16(b)(1), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Farm Service Agency:

(1) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282, *et seq.*).

(2) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441, *et seq.*), except the provisions of section 416(a)(1), (a)(2) and (b) of the Agricultural Act of 1949, as amended, unless specifically provided herein.

(3) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(i) Clearing photography projects;

(ii) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(iii) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(iv) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(v) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction;

(vi) Providing a Chairperson for the Photography Sales Committee of the Department;

(vii) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(viii) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(ix) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(x) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(4) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501, *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g, *et seq.*).

(5) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to agricultural production; food processing, storage, and distribution of farm equipment and fertilizers, rehabilitation and use of feed, agricultural and related agribusiness facilities; and farm credit and financial assistance.

(6) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201, *et seq.*).

(7) Conduct fiscal, accounting and claims functions relating to CCC programs for which the Foreign Agricultural Service has been delegated authority under § 2.43 and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(8) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98, *et seq.*).

(9) Supervise and direct Farm Service Agency State and county offices and designate functions to be performed by Farm Service Agency State and county committees.

(10) Administer the Dairy Indemnity Program under the Act of August 13, 1968, as amended (7 U.S.C. 450j, *et seq.*).

(11) Administer procurement, processing, handling, distribution,

disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1), except as delegated to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19 and to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3), and assist the Food and Consumer Service and the Agricultural Marketing Service in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751, *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(12) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, et seq.), and payment and related services with respect to export programs and barter operations.

(13) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781, *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(14) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501, *et seq.*) except those functions delegated in § 2.21(a)(8)(xi).

(15) Administer energy management activities as assigned.

(16) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901, *et seq.*) and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001, *et seq.*).

(17) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(18) Administer the U. S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(19) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(20) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231, *et seq.*).

(21) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(22) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(23) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(24) Administer the Integrated Farm Management Program under section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(25) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(26) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(27) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(28) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*) except for the authority contained in the following sections:

(i) Section 303(a)(2) and (3) (7 U.S.C. 1923(a)(2) and (3)), relating to real estate loans for recreation and non-farm purposes;

(ii) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(iii) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(iv) Section 306A (7 U.S.C. 1926a) and Section 306B (7 U.S.C. 1926b), relating to the Emergency Community Water Assistance Grant Programs;

(v) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(vi) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(vii) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(viii) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(ix) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(x) Section 342 (7 U.S.C. 1013a);

(xi) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(xii) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(29) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(30) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440, *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(31) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(32) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(33) Administer the emergency loan and guarantee programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No. 91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(34) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(35) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(36) Service, collect, settle, and liquidate:

(i) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, ''Water Conservation and Utilization projects'' in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(ii) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(iii) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(37) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(38) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101, *et seq.*).

(39) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(40) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. No. 103–248 (7 U.S.C. 1981(c), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(41) Provide supervision of the Federal Crop Insurance Corporation.

(42) Administer the provisions concerning the end-use certificate system authorized pursuant to section 301(f) of the North American Free Trade Implementation Act (19 U.S.C. 3391(f)).

(43) Determine the type and quantity of commodities that are available for programming under section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), and the Food for Progress Act

of 1985 (7 U.S.C. 1736o), and charge for the processing, packaging, transportation, handling and delivery to port of such commodities in connection therewith.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Farm and Foreign Agricultural Services:

(1) Designating counties and areas for emergency programs under Pub. L. No. 85–58, as amended.

(2) Making and issuing notes to the Secretary of the Treasury for the purposes of the Agricultural Credit Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929).

§ 2.43 Administrator, Foreign Agricultural Service.

(a) *Delegations.* Pursuant to § 2.16(a)(3) and (a)(6), subject to reservations in § 2.16(b)(2), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Foreign Agricultural Service:

(1) Coordinate the carrying out by Department agencies of their functions involving foreign agriculture policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development and other departments, agencies and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private United States and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(2) Conduct functions of the Department relating to GATT, WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801, *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101, *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901, *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act (except the provisions concerning the end-use certificate system authorized pursuant to section 321(f) of that Act (19 U.S.C. 3391(f)) delegated to the Administrator, Farm Service Agency), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(3) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(4) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32, of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs.

(5) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(6) Administer functions of the Department relating to import controls including, among others, functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) but not including those functions reserved to the Secretary under § 2.16(b)(2) and those relating to section 8e of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs.

(7) Represent the Department on the Interdepartmental Committee for Export Control and conduct Departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, *et seq.*), except as reserved to the Secretary under § 2.16(b)(2).

(8) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such agreement.

(9) Provide foreign agricultural intelligence and other foreign agricultural services in support of programs administered by the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*).

(10) Conduct economic analyses pertaining to the foreign sugar situation.

(11) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(12) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(13) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(14) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601, *et seq.*).

(15) Formulate policies and administer barter programs under which agricultural commodities are exported.

(16) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities on long-term credit or for foreign currencies under Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*).

(17) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8), and to represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(18) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C.

713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(19) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(20) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738, *et seq.*).

(21) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(22) Allocate among the various export programs agricultural commodities determined under § 2.16(a)(3)(xix) to be available for export.

(23) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(24) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2102–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(25) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(26) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated in § 2.80(a)(1), but including authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign agencies with respect to joint regulations and authority to approve regulations issued by the Department of State relating to the administration of the Foreign Service.

(27) Establish and maintain U.S. Agricultural Trade Offices to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. No. 95–501 (7 U.S.C. 1765a–g).

(28) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities, except as otherwise delegated in § 2.42(a)(43).

(29) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(30) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(31) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o), except as otherwise delegated in § 2.42(a)(43).

(32) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish International Scientific and Technical Cooperation in Food and Agriculture.

(33) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151, *et seq.*).

(34) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(35) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(36) Direct and coordinate the Department's work with international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201 and 2202).

(37) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(38) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(39) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(40) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(41) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(42) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) [Reserved]

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

§ 2.45 Deputy Under Secretary for Rural Economic and Community Development.

Pursuant to § 2.17(a), subject to reservations in § 2.17(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Rural Economic and Community Development, to be exercised only

during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Rural Economic and Community Development.

§ 2.47 Administrator, Rural Utilities Service.

(a) *Delegations.* Pursuant to §§ 2.17 (a)(14) and (a)(16) through (a)(20), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Utilities Service:

(1) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*) except for rural economic development loan and grant programs; (7 U.S.C. 940c and 950aa, *et seq.*): Provided, however, that the Administrator may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(2) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(3) The Administrator, Rural Utilities Service is designated to serve as the chief executive officer of the Rural Telephone Bank.

(4) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(ii) Section 306A (7 U.S.C. 1926a);

(iii) Section 306B (7 U.S.C. 1926b);

(iv) Section 306C (7 U.S.C. 1926c);

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(vi) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(vii) Section 310B(b) (7 U.S.C. 1932(b));

(viii) Section 310B(i)), relating to loans for business telecommunications partnerships;

(ix) Section 342 (7 U.S.C. 1013a); and

(x) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities;

(5) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(6) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(7) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(8) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service or its predecessor agencies.

(9) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Utilities Service.

(10) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to rural development credit and financial assistance.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(13) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa, *et seq.*).

(14) Administer water and waste facility programs and activities (7 U.S.C. 1926–1).

(b) *Reservations.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development:

(1) Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

(2) Administering loans for rural telephone facilities and service in rural areas as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*).

§ 2.48 Administrator, Rural Business and Cooperative Development Service.

(a) *Delegations.* Pursuant to §§ 2.17 (a)(1), (a)(2), (a)(14), (a)(16) through (a)(19) and (a)(21), subject to reservations in § 2.17(b)(1), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Business and Cooperative Development Service:

(1) Administer the rural economic development loan and grant programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa, *et seq.*).

(2) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306(a)(11)(A) (7 U.S.C. 1926(a)(11)(A)), related grants for business technical assistance and planning;

(ii) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(iii) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(iv) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(v) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(vi) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Business and Cooperative Development Service activities;

(3) Administer Alcohol Fuels Credit Guarantee Program Account (Pub L. No. 102–341, 106 Stat. 895).

(4) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(5) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(6) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95–620).

(7) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(8) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(9) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(10) Administer the Economically Disadvantaged Rural Community Loan program (7 U.S.C. 6616).

(11) Administer the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901, *et seq.*).

(12) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(13) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(14) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(i) Exchanging materials and results with such institutions or organizations;

(ii) Engaging in joint or coordinated activities; or

(iii) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(15) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Business and Cooperative Development Service or its predecessor agencies.

(16) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Business and Cooperative Development Service.

(17) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5195, *et seq.*), relating to rural development credit and financial assistance.

(18) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the

acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(19) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(20) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Pub. L. No. 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391, *et seq.*).

(21) Provide leadership and coordination within the executive branch at the state and local level of Federal rural development program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(22) Coordinate, at the state and local level, activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating agency for other departmental agencies having primary responsibilities, in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(23) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(24) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(25) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(26) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(27) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program contact (7 U.S.C. 2204; 7 U.S.C. 2204b).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

§ 2.49 Administrator, Rural Housing and Community Development Service.

(a) *Delegations.* Pursuant to §§ 2.17(a)(14), (a)(16) through (a)(19) and (a)(22), and subject to policy guidance and directions by the Under Secretary for Rural Economic and Community Development, the following delegations are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Housing and Community Development Service:

(1) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), except with respect to financing for water and

waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);

(ii) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(iii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Housing and Community Development Service activities;

(2) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471, *et seq.*), except those functions pertaining to research.

(3) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(4) Administer the rural housing disaster program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(5) Collect, service, and liquidate loans made, insured or guaranteed by the Rural Housing and Community Development Service or its predecessor agencies.

(6) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100–628 (42 U.S.C. 1480(d)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(7) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service.

(8) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to rural housing and community development credit and financial assistance.

(9) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(10) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) *Reservation*. The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the Treasury for the purposes the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929(a)) and the Rural Housing Insurance Fund as authorized by title V of the Housing Act of 1949 (41 U.S.C. 1487).

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

§ 2.51 Deputy Under Secretary for Food Safety.

Pursuant to § 2.18, and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food Safety to the Deputy Under Secretary for Food Safety, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services.

§ 2.53 Administrator, Food Safety and Inspection Service.

(a) *Delegations*. Pursuant to § 2.18, the following delegations of authority are made by the Under Secretary for Food Safety to the Administrator, Food Safety and Inspection Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(iii) Egg Products Inspection Act, except for the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(iv) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(v) Humane Slaughter Act (7 U.S.C. 1901–1906); and

(vi) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to wholesomeness of meat and poultry and products thereof and inspection of egg and egg products.

(3) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(4) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended

by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(5) Administer the National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

(6) Administer and conduct a food safety research program (7 U.S.C. 427).

(7) Coordinate with the Animal and Plant Health Inspection Service the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(8) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(b) [Reserved]

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

§ 2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.

Pursuant to § 2.19(a), subject to reservations in § 2.19(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food, Nutrition, and Consumer Services to the Deputy Under Secretary for Food, Nutrition and Consumer Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Food, Nutrition, and Consumer Services.

§ 2.57 Administrator, Food and Consumer Service.

(a) *Delegations.* Pursuant to §§ 2.19(a)(1), (a)(2) and (a)(5), subject to reservations in § 2.19(b)(1), the following delegations of authority are made by the Under Secretary for Food, Nutrition, and Consumer Services to the Administrator, Food and Consumer Service:

(1) Administer the following legislation:

(i) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(ii) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(iii) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(iv) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. No. 103–448).

(2) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(i) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(ii) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(iii) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation;

(iv) Section 9 of the Act of September 6, 1958 (7 U.S.C. 1431b);

(v) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(vi) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(vii) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(viii) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(ix) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(x) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(xi) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. No. 97–98);

(xii) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(xiii) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(xiv) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(3) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act 42 U.S.C. 5179).

(4) In connection with the functions assigned in paragraphs (a)(1), (a)(2), and (a)(3) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(5) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(6) Authorize defense emergency food stamp assistance.

(7) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(8) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(9) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(10) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(11) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(12) Serve as a consumer ombudsman and communication link between consumers and the Department.

(13) Approve the designation of agency Consumer Affairs Contacts.

(b) [Reserved]

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

§ 2.59 Deputy Under Secretaries for Natural Resources and Environment.

Pursuant to § 2.20(a), subject to reservations in § 2.20(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Natural Resources and Environment to the Deputy Under Secretaries for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Natural Resources and Environment. Provided, that, except in the absence of both the Under Secretary and a Deputy Under Secretary, this authority shall be exercised by the respective Deputy Under Secretary only with respect to the area or responsibility assigned to him or her.

§ 2.60 Chief, Forest Service.

(a) *Delgations.* Pursuant to §§ 2.20(a)(1), (a)(2), (a)(6), (a)(7)(ii) and (a)(8), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well being).

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559-f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 481) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 401(a)).

(8) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research; renewable resource environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to

reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(17) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control program (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(23)(i)(A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands:

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1);

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Farm Service Agency in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(26) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(27) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(28) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(29) [Reserved]

(30) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(31) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(32) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(33) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(34) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(35) Represent USDA on the National Response Team on hazardous spills pursuant to Pub. L. No. 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(36) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(37) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 261.70, issue technical amendments and corrections to final rules issued by the Secretary or Under Secretary for Natural Resources and Environment, and issue proposed and final rules necessary and appropriate to carry out title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215)

with regard to National Forest System Lands.

(38) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(39) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(40) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226, *et seq.*).

(41) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendment, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(42) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(43) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the ''Federal Land Manager'' pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

(44) Administer the Public Lands Corps program (16 U.S.C. 1721, *et seq.*) for USDA consistent with the Department's overall national service program.

(45) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(46) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(b) *Reservations.* The following authorities are reserved to the Under

Secretary for Natural Resources and Environment:

(1) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided in 36 CFR 261.70 and § 2.60(a)(37).

(2) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3,000 acres acquired under or subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(3) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), and Executive Order No. 11609, 3 CFR, 1971–1975 Comp., p. 586).

(4) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249) and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(5) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(6) Approval of acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) of $250,000 or more in value for national forest purposes.

§ 2.61 Chief, Natural Resources Conservation Service.

(a) *Delegations.* Pursuant to §§ 2.20(a)(1), (a)(3), (a)(5), (a)(6), (a)(7)(ii) and (a)(8), subject to reservations in § 2.20(b)(1), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Natural Resources Conservation Service:

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Provide national leadership in evaluating and coordinating land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201, *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 4201 note), except as otherwise delegated to the Administrator, Agricultural Research Service in § 2.65(a)(80) and the Administrator, Cooperative State Research, Education, and Extension Service in § 2.66(a)(76).

(3) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590a–f, 1–1, q, q-1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetropolitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*2*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the Watershed Protection and Flood Prevention Programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1, except for responsibilities assigned to the Forest Service;

(ii) The emergency flood control work under 33 U.S.C. 701b-1, except for

responsibilities assigned to the Forest Service;

(iii) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service;

(iv) The pilot watershed projects under 16 U.S.C. 590a–f, and 16 U.S.C. 1001–1009, except for responsibilities assigned to the Forest Service;

(v) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Rural Housing and Community Development Service and the Forest Service;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201, *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Farm Service Agency.

(5) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Rural Utilities Service.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001, *et seq.*), except for responsibilities assigned to other USDA agencies.

(9) Administer Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251, *et seq.*).

(10) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c) including:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(13) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801, *et seq.*), including responsibilities for:

(i) the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(ii) technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(iii) the Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(iv) the Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(v) the Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(16) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(17) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301, *et seq.*).

(18) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(19) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(20) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(21) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to agricultural lands and water.

(22) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*), except for responsibilities assigned to the Forest Service.

(23) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and

wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622) and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlement, but excluding section 122(b)(1) of the Act (42 U.S.C. 9633(b)(1)), related to mixed funding agreements.

(24) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(2) Approving additions to authorized Resource Conservation and Development Projects that designate new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance, pursuant to 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(3) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

§ 2.63 Deputy Under Secretary for Research, Education, and Economics.

Pursuant to § 2.21(a), subject to reservations in § 2.21(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Research, Education, and Economics, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Research, Education, and Economics.

§ 2.65 Administrator, Agricultural Research Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(1), (a)(3) and (a)(5) through (a)(7), subject to reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Agricultural Research Service:

(1) Coordinate USDA policy relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(2) Conduct research related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(3) Conduct research on the control of undesirable species of honeybees in cooperation with specific foreign governments (7 U.S.C. 284).

(4) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(5) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(6) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(7) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(8) Conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in §§ 2.22(a)(1)(ii) and 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201 and 2204).

(9) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(10) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(11) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(12) Make facilities grants and conduct research under the IR–4 program (7 U.S.C. 450i(d) and (e)).

(13) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(14) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the by-products thereof (7 U.S.C. 1292).

(15) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(16) Conduct research to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(17) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(18) Provide national leadership and support for research programs and other research activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101, *et seq.*).

(19) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(20) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(21) Conduct program evaluations to improve the administration and effectiveness of agricultural research and education programs (7 U.S.C. 3317).

(22) Enter into contracts, grants, or cooperative agreements to further research programs and library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(23) Enter into cost-reimbursable agreements relating to agricultural research, teaching and to further library and related information programs supporting research, extension and teaching programs in the food and agricultural sciences (7 U.S.C. 3319a).

(24) Conduct research for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(25) Conduct research on potential uses for compost from agricultural wastes, including evaluating the application of compost on soil, plants, and crops (7 U.S.C. 3130).

(26) Reserved.

(27) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research activities (7 U.S.C. 3291).

(28) Perform research and development at aquacultural research and development centers (7 U.S.C. 3322).

(29) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(31) Conduct research to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(32) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841).

(33) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(34) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(35) Conduct research on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(36) Conduct research in the control and eradication of exotic pests (7 U.S.C. 5883).

(37) Conduct research to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(38) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(39) Establish and coordinate USDA programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(40) Conduct research for the development of technology to determine animal lean content (7 U.S.C. 5925).

(41) Conduct research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(42) Conduct research to develop production methods and commercial uses of mesquite (7 U.S.C. 5925).

(43) Conduct research to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(44) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(45) Conduct basic and applied research in the development of new commercial products from natural plant materials (7 U.S.C. 5925).

(46) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(47) Coordinate USDA policy and programs relating to global climate change (7 U.S.C. 6701–6703).

(48) Coordinate Departmental policies under the Toxic Substances Control Act (15 U.S.C. 2601–2629).

(49) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an

inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(50) Perform research and administer grants for research and development in aquaculture (16 U.S.C. 2804).

(51) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices of real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(52) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(53) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(54) Conduct research activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(55) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(56) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(57) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18840, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)), as will insure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE.; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318, *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(58) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(59) Provide management support services for the Economic Research Service, the Cooperative State Research, Education and Extension Service, and the National Agricultural Statistics Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, ADP support, and related administrative services.

(60) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(61) Carry out research activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(62) Perform food and agricultural research in support of functions assigned to the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*).

(63) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(64) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term ''research'' includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(iii) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(65) The authority in paragraph (a)(64) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Coordinate nutrition education research and professional education projects within the Department; and

(iv) Maintain data generated on food composition in a National Nutrient Data Bank.

(66) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(67) Conduct a program of nutrition education research.

(68) Provide staff support to the Under Secretary for Research, Education, and Economics related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Pub. L. No. 101–445, 7 U.S.C. 5301, *et seq.*

(69) Obtain and furnish excess property to eligible recipients for use in the conduct of research and extension programs.

(70) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(71) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities in cooperation with the Extension Service (7 U.S.C. 950aa–1).

(72) Develop and maintain library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(73) Accept gifts and order disbursements from the Treasury for the benefit of the National Agricultural Library or for the carrying out of any of its functions (7 U.S.C. 2264–2265).

(74) Provide for the dissemination of appropriate rural health and safety information resources possessed by the National Agricultural Library Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(75) Provide national leadership in the development and maintenance of library and related information systems and other activities to support the research, extension, and teaching programs in the food and agricultural sciences pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 and 3121).

(76) Administer the programs and services of the National Agricultural Library consistent with its charge to serve as the primary agricultural information resource of the United States and enter into agreements and receive funds from various entities to conduct National Agricultural Library activities (7 U.S.C. 3125a).

(77) Provide and distribute information and data about Federal, State, local, and other rural development assistance programs and services available to individuals and organizations. To the extent possible, the National Agricultural Library shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(78) Assemble and collect food and nutrition educational materials, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(79) Conduct program evaluations to improve the administration and efficacy of the National Agricultural Library and related information systems in the food and agricultural sciences (7 U.S.C. 3317).

(80) Administer the National Agricultural Library, including the farmland information center, pursuant to section 1544(b) of the Farmland Protection Policy Act (7 U.S.C. 4205(b)).

(81) Support Department water programs through participation in State water quality coordination programs and dissemination of agrichemical information (7 U.S.C. 5503–5506).

(82) Provide a repository of agriculture and ground water quality planning information (7 U.S.C. 5505).

(83) Disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(84) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(85) Represent the Department in international organizational activities and on international technical committees concerned with library and information science activities.

(86) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews and other analytical information tools.

(87) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(88) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(89) Copy and deliver on demand selected articles and other materials from the National Agricultural Library's

collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976 (17 U.S.C. 106, 107 and 108).

(90) Formulate, write, or prescribe bibliographic and technically related standards for the library and information systems of USDA.

(91) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(92) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(b) [Reserved]

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(1) and (a)(3), subject to the reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Extension to the Administrator, Cooperative State Research, Education, and Extension Service.

(1) Administer research and technology development grants related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(2) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(3) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(4) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(5) Support agricultural research at eligible institutions in the States through provision of Federal-grant funds to help financial physical research facilities (7 U.S.C. 390–390k).

(6) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i(e)).

(7) Administer a program of competitive grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for research to further USDA programs (7 U.S.C. 450i(b)).

(8) Administer a program of special grants to carry out research to facilitate or expand promising breakthroughs in areas of food and agricultural sciences and to facilitate or expand ongoing State-Federal food and agricultural research programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i (c) and (d)).

(9) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(10) Administer, in cooperation with the States, a cooperative rural development and small farm research and extension program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(11) Provide national leadership and support for cooperative research and extension programs and other cooperative activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101, *et seq.*).

(12) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(13) Administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(14) Administer the National Food and Agricultural Sciences Teaching Awards program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(15) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohol and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(16) Administer a grant, in consultation with the Agricultural Research Service, for the establishment of a food science and nutrition research center for the Southeast Region of the United States (7 U.S.C. 3174).

(17) Conduct a program of grants to States to support continuing animal health and disease research programs under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(18) Support continuing agricultural and forestry research and extension, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(19) Administer grants to 1890 land-grant colleges, including Tuskegee University, to help finance and upgrade agricultural and food science facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222(b)–3223).

(20) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research and extension activities (7 U.S.C. 3291).

(21) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(22) Conduct program evaluations to improve the administration and efficacy of the cooperative research grants and extension programs involving State agricultural experiment stations, cooperative extension services, and colleges and universities (7 U.S.C. 3317).

(23) Enter into contracts, grants, or cooperative agreements to further research, extension or teaching activities in the food and agricultural sciences (7 U.S.C. 3318)

(24) Enter into cost-reimbursable agreements relating to agricultural research, extension or teaching activities (7 U.S.C. 3319a).

(25) Provide technical assistance to farm owners and operators, marketing cooperatives, and others in the development and implementation of a

research and pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(26) Administer an aquacultural assistance program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; conducting a program of extension and demonstration centers; and making grants to States to formulate aquaculture development plans for the production and marketing of aquaculture species and products (7 U.S.C. 3322).

(27) Administer grants to further develop and expand aquaculture research facilities for intensive water recirculating aquaculture systems (7 U.S.C. 3323).

(28) Administer a cooperative rangeland research program (7 U.S.C. 3331–3336).

(29) Administer grants for basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Administer programs and conduct projects in cooperation with other agencies for research and education on sustainable agriculture (7 U.S.C. 5811–5813).

(31) Administer a cooperative research and extension program to optimize crop and livestock production potential in integrated resource management and integrated crop management systems (7 U.S.C. 5821).

(32) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(33) Administer a cooperative extension program on agricultural weather forecasts and climate information for agricultural producers and administer a grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(34) In cooperation with the Agricultural Research Service, administer competitive research grants regarding the production, preparation, processing, handling, and storage of agriculture products (7 U.S.C. 5871–5874).

(35) Administer a grants and contracts program on integrated pest management including research to benefit floriculture and administer an extension program developed for integrated pest management (7 U.S.C. 5881).

(36) Administer a grants program to States on the control of infestations and eradication of exotic pests (7 U.S.C. 5883).

(37) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(38) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(39) Administer a competitive grants program in support of the development of a plant genome mapping program (7 U.S.C. 5924).

(40) Support research related to the development of new commercial products derived from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(41) Administer a competitive grants program to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(42) Administer a competitive grants program to investigate enhanced selection and processing techniques of prickly pears (7 U.S.C. 5925).

(43) Support research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(44) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(45) Administer a grants program to States on immunoassay, as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(46) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(47) Administer a competitive grants program, in consultation with the Agricultural Research Service, to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(48) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(49) Support research on the effects of global climate change in agriculture and forestry, including mitigation of the effects on crops of economic significance, and on the effects of the emissions of certain gases on global climate change (7 U.S.C. 6702).

(50) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)–(k)).

(51) Administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a–8).

(52) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(53) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural responsibilities within the Department (16 U.S.C. 2805).

(54) Administer extension education programs in aquaculture and administer grants related to research and development in aquaculture (16 U.S.C. 2806).

(55) Coordinate research by cooperating State research institutions and administer education and information activities assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*).

(56) Provide management support services to agencies reporting to the Under Secretary for Research, Education, and Economics in the administration of discretionary grants.

(57) Represent the Department on the Federal Interagency Council on Education.

(58) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(59) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(60) Administer education programs for the users and dealers of agrichemicals (7 U.S.C. 5506).

(61) Administer a cooperative agricultural extension program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(62) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(63) Conduct educational and demonstration work related to the distribution and marketing of a agricultural products under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

(64) Administer a competitive grant program for non-profit institutions to establish and operate centers for rural

technology or cooperative development (7 U.S.C. 1932(f)).

(65) Administer a nutrition education program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(66) Administer a grants program for rural health and safety education (7 U.S.C. 2662).

(67) Administer a rural economic and business development program to employ specialists to assist individuals in business activities (7 U.S.C. 2662).

(68) Administer a national program to provide rural citizens with training to increase their leadership abilities (7 U.S.C. 2662).

(69) Administer a competitive grant program for financially stressed farmers, dislocated farmers, and rural families (7 U.S.C. 2662(f)).

(70) Administer a grant program to improve the rural health infrastructure (7 U.S.C. 2662 note).

(71) Administer a competitive grant program to establish demonstration areas for rural economic development (7 U.S.C. 2662a).

(72) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(73) Identify and compile information on methods of composting agricultural wastes and its potential uses and develop educational programs on composting (7 U.S.C. 3130).

(74) Administer a national food and human nutrition extension program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(75) Make grants, under such terms and conditions as the Administrator determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(76) Design educational programs, implement, and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland pursuant to section 1544(a) of the Farmland Protection Policy Act (7 U.S.C. 4205(a)).

(77) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(78) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(79) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(80) Establish a national pesticide resistance monitoring program (7 U.S.C. 5882).

(81) Conduct educational programs on the biology and behavior of chinch bugs (7 U.S.C. 5884).

(82) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(83) Administer competitive grants to States to establish a pilot project to coordinate food and nutrition education programs (7 U.S.C. 2027(a) and 5932).

(84) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(85) Conduct educational and demonstrational work in cooperative farm forestry programs (16 U.S.C. 568).

(86) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(87) Conduct forestry and natural resource education programs, including guidelines for technology transfer (16 U.S.C. 1674).

(88) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(89) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(90) Implement and conduct an educational program to assist the development of urban and community forestry programs (16 U.S.C. 2105).

(91) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(92) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(93) Conduct demonstrational and promotional activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(94) Provide leadership and direct assistance in planning, conducting, and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(95) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity (part 18 of this title).

(96) Carry out demonstration and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(97) Provide educational and technical assistance in implementing and administering the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509, (16 U.S.C. 3831–3844)).

(b) [Reserved]

§ 2.67 Administrator, Economic Research Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(3), (a)(8) and (a)(9), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Economic Research Service:

(1) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(2) Conduct economic and social science research and analyses relating to:

(i) food and agriculture situation and outlook;

(ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(v) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(3) Perform economic and other social science research under section 104(b)(1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704(b)(1), (3)).

(4) Investigate and make findings as to the effect upon the production of food

and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(5) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio and television.

(6) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Office of International Cooperation and Development, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(7) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(8) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning estimates of supplies of agricultural commodities and evaluation of requirements therefor; food and agricultural aspects of economic stabilization and economic research; and coordination of energy programs.

(9) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(10) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(11) Provide Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans; and

(v) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(12) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from the departments and agencies of the Federal Government pursuant to interagency agreements.

(13) Represent the Under Secretary for Research, Education, and Economics at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy and other governmental departments and agencies.

(14) Provide the Under Secretary for Research, Education, and Economics with such assistance as he may request to perform the duties delegated to him concerning energy.

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(3) and (a)(8), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, National Agricultural Statistics Service:

(1) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 951, and 2204).

(2) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1905, and 2072).

(3) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(4) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning coordination of damage assessment; and food and agricultural aspects of agricultural statistics.

(5) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(6) Enter cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(7) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension, and education activities (limited to

arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and, with the concurrence of the Foreign Agricultural Service, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

Subpart L—Delegations of Authority by the Chief Economist

§ 2.70 Deputy Chief Economist.

Pursuant to § 2.29, the following delegation of authority is made by the Chief Economist to the Deputy Chief Economist, to be exercised only during the absence or unavailability of the Chief Economist: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Economist.

§ 2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.

(a) *Delegations.* Pursuant to § 2.29(a)(2), the following delegations of authority are by the Chief Economist to the Director, Office of Risk Assessment and Cost-Benefit Analysis:

(1) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the **Federal Register** as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e).

(2) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

§ 2.72 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* Pursuant to §§ 2.29(a)(3) through (a)(7), the following delegations of authority are made by the Chief Economist to the Chairman, World Agricultural Outlook Board:

(1) *Related to food and agriculture outlook and situation.*

(i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(2) *Related to weather and climate.*

(i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(3) *Related to interagency commodity estimates committees.*

(i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(4) *Related to remote sensing.*

(i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(5) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

Subpart M—Delegations of Authority by the Chief Financial Officer

§ 2.75 Deputy Chief Financial Officer.

Pursuant to § 2.28, the following delegation of authority is made by the Chief Financial Officer to the Deputy Chief Financial Officer, to be exercised only during the absence or unavailability of the Chief Financial Officer: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

§ 2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.

Pursuant to § 2.22(a), subject to reservations in § 2.22(b), and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Marketing and Regulatory Programs to the Deputy Assistant Secretary for Marketing and Regulatory Programs, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Marketing and Regulatory Programs.

§ 2.79 Administrator, Agricultural Marketing Service.

(a) *Delegations.* Pursuant to §§ 2.22 (a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(2) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(i) Studies of facilities and methods used in physical distribution of food and other farm products;

(ii) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(iii) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(3) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(4) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(5) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(6) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies and programs for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(ii) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(iii) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(iv) [Reserved]

(v) Naval Stores Act (7 U.S.C. 91–99);

(vi) Tobacco Inspection Act (7 U.S.C. 511–511q);

(vii) Wool Standards Act (7 U.S.C. 415–415d);

(viii) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a–608e, 610, 612, 614, 624, 671–674);

(ix) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as specified in § 2.43(a)(24);

(x) Export Apple and Pear Act (7 U.S.C. 581–590);

(xi) Export Grape and Plum Act (7 U.S.C. 591–599);

(xii) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(xiii) Perishable Agricultural Commodities Act (7 U.S.C. 499a–499s);

(xiv) Produce Agency Act (7 U.S.C. 491–497);

(xv) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(xvii) Tobacco Statistics Act (7 U.S.C. 501–508);

(xxii) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(xxiii) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(xxiv) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as specified in § 2.43(a)(24);

(xxv) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(xxvi) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as specified in § 2.43(a)(24);

(xxvii) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as specified in § 2.43(a)(24);

(xxviii) [Reserved]

(xxix) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as specified in §§ 2.42(a)(25) and 2.43(a)(24);

(xxxi) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated in § 2.43(a)(24);

(xxxii) Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918), except as delegated in §§ 2.42(a)(29) and 2.43(a)(24);

(xxxiii) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated in § 2.43(a)(24);

(xxxiv) Egg Products Inspection Act relating to the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(xxxv) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(xxxvi) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(xxxvii) In carrying out the procurement functions in paragraphs (a)(8) (xxxv) and (xxxvi) of this section, the Administrator, Agricultural Marketing Service shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(xxxviii) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693);

(xxxix) The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819);

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616);

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(xlii) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(xliv) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(xlv) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(xlvi) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as specified in § 2.43(a)(24);

(xlvii) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as specified in § 2.43(a)(24);

(xlviii) Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as specified in § 2.43(a)(24);

(xlix) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as specified in § 2.43(a)(24);

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(li) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(lii) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(liii) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(liv) Pesticide Recordkeeping (7 U.S.C. 136i–l) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(lv) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(lvi) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(9) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Administrator, Agricultural Marketing Service and charge user fees therefore, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(10) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Assistant

Secretary for Marketing and Regulatory Programs:

(1) Taking final action on regulations under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A)); section 12(a) of the Cotton Research and Promotion Act (7 U.S.C. 2111(a)); section 311(a) of the Potato Research and Promotion Act (7 U.S.C. 2620(a)); section 118(a) of the Dairy Production Stabilization Act of 1983, as amended, (7 U.S.C. 4509(a)); section 1625(a) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4814(a)); section 1650(a) of the Watermelon Research and Promotion Act (7 U.S.C. 4909(a)); section 10(a) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4609(a)); section 14(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2713(a)); section 1714(a) of the Floral Research and Consumer Information Act (7 U.S.C. 4313(a)); section 1710(a) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409(a)); section 1913(a) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6008(a)); section 1927(a) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6106(a)); section 1957(a) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6206(a)); section 1971(a) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6306(a)); section 1999K(a) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6410(a)); and section 7 of the Sheep Promotion, Research, and Information Act (7 U.S.C. 7106).

(2) Issuing, amending, terminating, or suspending any marketing agreement or order or any provision thereof under the Agricultural Marketing Agreement Act of 1937; the Cotton Research and Promotion Act; the Potato Research and Promotion Act; subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended; the Pork Promotion, Research, and Consumer Information Act of 1985; the Beef Research and Information Act, as amended; the Watermelon Research and Promotion Act; the Honey Research, Promotion, and Consumer Information Act; the Floral Research and Consumer Information Act; the Egg Research and Consumer Information Act; the Wheat and Wheat Foods Research and Nutrition Education Act; the Pecan Promotion and Research Act of 1990; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Lime Research, Promotion, and Consumer Information Act of 1990; the Soybean Promotion, Research, and Consumer Information Act; the Fluid Milk Promotion Act of 1990; the Organic Foods Production Act of 1990; and the Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* Pursuant to §§ 2.22(a)(2), (a)(6) through (a)(9), subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service: Exercise functions of the Secretary of Agriculture under the following authorities:

(1) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service, nor an authority to represent the Department of Agriculture in interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(2) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the gypsy moth program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

(3) The Mexican Border Act, as amended (7 U.S.C. 149).

(4) The Golden Nematode Act (7 U.S.C. 150–150g).

(5) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj).

(6) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(7) The Terminal Inspection Act, as amended (7 U.S.C. 166).

(8) The Honeybee Act, as amended (7 U.S.C. 281–286).

(9) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656).

(10) Tariff Act of June 17, 1930, as amended, section 306 (19 U.S.C. 1306).

(11) Act of August 30, 1890, as amended (21 U.S.C. 102–105).

(12) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130).

(13) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1).

(14) Act of June 16, 1948 (21 U.S.C. 114e–114f).

(15) Act of September 6, 1961 (21 U.S.C. 114g–114h).

(16) Act of July 2, 1962 (21 U.S.C. 134–134h).

(17) Act of May 6, 1970 (21 U.S.C. 135–135b).

(18) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618).

(19) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429).

(20) The responsibilities of the United States under the International Plant Protection Convention.

(21) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159).

(22) Horse Protection Act (15 U.S.C. 1821–1831).

(23) 28 Hour Law, as amended (45 U.S.C. 71–74).

(24) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902).

(25) Purebred animal duty-free-entry provision of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01).

(26) Virus-Serum-Toxin Act (21 U.S.C. 151–158).

(27) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a).

(28) The Agricultural Marketing Act of 1946, section 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine.

(29) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests.

(30) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(31) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814).

(32) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

(33) Executive Order 11987, 3 CFR, 1977 Comp., p. 116.

(34) Section 101(d), Organic Act of 1944 (7 U.S.C. 430).

(35) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813).

(36) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378).

(37) Title III (and title IV to the extent that it relates to activities under title III) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610).

(38) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260).

(39) Provide management support services for the Grain Inspection, Packers and Stockyards Administration, and the Agricultural Marketing Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, and related administrative services.

(40) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and other governmental and private organizations.

(41) The Act of March 2, 1931 (7 U.S.C. 426–426b).

(42) The Act of December 22, 1987 (7 U.S.C. 426c).

(43) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries (7 U.S.C. 3291(a)(3)).

(44) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(45) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(46) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended.

(47) The provisions of 35 U.S.C. 156.

(48) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(49) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Marketing and Regulatory Programs: The authority to make determinations under 35 U.S.C. 156 as to whether an applicant acted with due diligence.

§ 2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

(a) *Delegations.* Pursuant to §§ 2.22(a)(3) and (a)(9), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Grain Inspection Service, Packers and Stockyards Administration:

(1) Administer the United States Grain Standards Act, as amended (7 U.S.C. 71–87h).

(2) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities related to grain.

(3) Administer the Packers and Stockyards Act, 1921, as amended and supplemented.

(4) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1665, 1681–1681t), with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(5) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(6) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)-(h) of the Act (42 U.S.C. 9604(e)-(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(7) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) [Reserved]

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

§ 2.83 Deputy Assistant Secretary for Congressional Relations.

Pursuant to § 2.23, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers which are now or which may hereafter be delegated to the Assistant Secretary for Congressional Relations.

§ 2.85 Director, Office of Congressional and Intergovernmental Relations.

(a) *Delegations.* Pursuant to § 2.23, the following delegations of authority are made by the Assistant Secretary for Congressional Relations to the Director, Office of Congressional and Intergovernmental Relations:

(1) Exercise responsibility for coordination of all congressional matters in the Department.

(2) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.

(3) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(i) National Association of State Departments of Agriculture;

(ii) Office of Intergovernmental Relations (Office of Vice President);

(iii) Advisory Commission on Intergovernmental Relations;

(iv) Council of State Governments;

(v) National Governors Conference;

(vi) National Association of Counties;

(vii) National League of Cities;

(viii) International City Managers Association;

(ix) U.S. Conference of Mayors; and

(x) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(4) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(5) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(6) Act as the department representative for Federal executive board matters.

(7) Administer the implementation of the National Historic Preservation Act of 1966, National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(8) Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.87 Deputy Assistant Secretary for Administration.

Pursuant to § 2.24(a), subject to reservations in § 2.24(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration.

§ 2.89 Director, Office of Civil Rights Enforcement.

(a) *Delegations.* Pursuant to §§ 2.24(a)(8), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Civil Rights Enforcement:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs;

(ii) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(iii) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(iv) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(v) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(vi) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(vii) Actions to develop and implement the Department's Federal Women's Programs; and

(viii) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department of Agriculture pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department of Agriculture pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make determinations, on both the merits and required corrective action, as to complaints filed under subpart B of part 15 of this title.

(13) Conduct investigations and compliance reviews Departmentwide.

(14) Develop regulations, plans, and procedures necessary to carry out the

Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(15) Perform staff work for the Director of Equal Employment Opportunity including coordination of the Department's affirmative employment program, special emphasis programs, Federal equal opportunity recruitment program, equal employment opportunity evaluations, and development of policy.

(16) Provide equal employment opportunity services for managers and employees in the Departmental staff offices.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(18) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial monitored group enrollment in Departmental programs and activities.

(19) Perform the EEO counseling function for the Department.

(20) Maintain liaison with historically black colleges and universities and other colleges and universities with substantial minority group enrollment, and assisting USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(22) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Perform staff work for the Director of Equal Employment Opportunity on the preparation of decisions on complaints of discrimination.

(25) Provide liaison on EEO matters concerning complaints and appeals with USDA agencies and Department employees.

(26) Investigate USDA EEO complaints, with authority to enter into and administer contracts for such investigations.

(27) Make final decisions on complaints and grievance appeals, except in those cases where the Director, Office of Civil Rights Enforcement has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(28) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(i) Was involved directly in the grievance; or

(ii) Made the informal decision; or

(iii) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(29) The provisions of paragraphs (a)(27) and (a)(28) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(b) [Reserved]

§ 2.90 Director, Office of Information Resources Management.

(a) *Delegations.* Pursuant to §§ 2.24(a)(4) and (a)(6), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Information Resources Management:

(1) Assist the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), with the development of Departmental information resource management principles, policies and objectives.

(2) Coordinate with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the development and promulgation of Departmental information resources management standards, guidelines, rules, and regulations necessary to implement approved principles, policies, and objectives.

(3) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(4) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(5) Provide Departmentwide guidance and direction in all aspects of the USDA information management program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(6) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(7) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(8) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(9) Administer the Departmental records, forms, reports, and directives management programs, in coordination with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(10) Manage all aspects of the USDA telecommunications program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(11) Implement a program for applying information resources management technology to improve productivity in the Department.

(12) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(13) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(14) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly

used by multiple Department agencies and offices.

(15) Provide automation, forms management, files management, directives management, and related services, with authority to take any action required by law or regulation to provide such services, for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such of the above service for any other officer or agency of the Department as may be agreed.

(16) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(17) Provide staff assistance as required for the Secretary, general officers, and other Department and agency officials.

(18) Provide related support services needed by the Department to carry out defense responsibilities.

(19) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(20) Review and make recommendations to the Assistant Secretary for Administration on proposed waivers to Federal Information Processing Standards (FIPS) pursuant to section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(b) [Reserved]

§ 2.91 Delegations to the Director, Office of Operations.

(a) *Delegations.* Pursuant to §§ 2.24(a)(3), (a)(4) and (a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(i) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(ii) Socioeconomic programs relating to contracting, excepting those matters otherwise vested by statute in the Director of Small and Disadvantaged Business Utilization;

(iii) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(iv) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(v) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(vi) Mail management;

(vii) Motor vehicle fleet and other vehicular transportation;

(viii) Transportation of things (traffic management);

(ix) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(x) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601, et seq.); and

(xi) Development and implementation of energy management actions related to the internal operations of the Department. Maintain liaison with other Government agencies in these matters.

(2) Operate, or provide for the operation of, centralized Departmental services to provide printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(3) Exercise the following special authorities:

(i) The Director, Office of Operations, is designated as the Department's Debarring Officer, and authorized to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(ii) Conduct liaison with the Office of the **Federal Register** (1 CFR part 16), including the making of required certifications pursuant to 1 CFR part 18;

(iii) Maintain custody and permit appropriate use of the official seal of the Department;

(iv) Establish policy for the use of the official flags of the Secretary and the Department;

(v) Coordinate collection of historical material for Presidential Libraries;

(vi) Oversee the safeguarding of unclassified materials designated ''For Official Use Only;''

(vii) Make determinations under 48 CFR 14.406–3(a) through (d), related to mistakes in bids alleged after opening of bids and before award. Except for the authority to permit withdrawal of bids under 48 CFR 14.406–3(c), this authority may not be redelegated; and

(viii) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election allowed by 26 CFR 1.6050M–1(d)(5)(i).

(4) Provide procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such of the above services listed in paragraph (a)(4) of this section for any other officers or agencies of the Department as may be agreed.

(5) Exercise full Departmentwide contracting and procurement authority for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies, subject to the review of the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This authority includes the promulgation of Departmental directives regulating the management of contracting and procurement functions.

(6) Provide related support services needed by the Department to carry out defense responsibilities.

(7) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(8) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(9) Exercise authority under the Department's Acquisition Executive (Assistant Secretary for Administration) to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–

109, Major Systems Acquisitions. This delegation includes the authority to:

(i) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(ii) Review the program management of each major system acquisition;

(iii) Designate the program manager for each major system acquisition; and

(iv) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(10) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, the Director, Office of Operations, is designated as the Senior Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(iii) Designating contracting officers;

(iv) Establishing clear lines of contracting authority;

(v) Evaluating and monitoring the performance of the Department's procurement system;

(vi) Managing and enhancing career development of the procurement work force;

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards;

(ix) Certifying to the Secretary that the procurement system meets approved standards;

(x) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(xi) Redelegating, as appropriate, the authority in paragraph (a)(10)(i) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(xii) Redelegating the authorities in paragraphs (a)(10) (ii), (iii), (iv), (vi), and (vii) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(11) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(12) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(13) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) [Reserved]

§ 2.92 Director, Office of Personnel.

(a) *Delegations.* Pursuant to §§ 2.24(a)(4), (a)(5) and (a)(7), subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director of Personnel:

(1) Authority to formulate and issue Department policy, standards, rules and regulations relating to personnel.

(2) Provide personnel management procedural guidance and operational instructions.

(3) Design and establish personnel data systems.

(4) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(5) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(6) Receive, review, and recommend action on all requests for the Secretary's or Assistant Secretary for Administration's approval in personnel matters.

(7) Make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such adverse action is not being decided in a timely manner.

(8) Represent the Department in personnel matters in all contacts outside the Department.

(9) Specific authorities in the following operational matters:

(i) Authorize cash awards above $2,500;

(ii) Waive repayment of training expenses where employee fails to fulfill service agreement;

(iii) Establish or change standards and plans for awards to private citizens;

(iv) Execute, change, extend, or renew:

(A) Labor-Management Agreements; and

(B) Association of Management Officials or Supervisor's Agreements.

(v) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(vi) Change a position (with no material change in duties) from GS to a pay system other than a wage system, or vice versa;

(vii) Grant restoration rights, and release employees with administrative re-employment rights;

(viii) Change working hours for groups of 50 or more employees in the Washington, D.C. metropolitan area;

(ix) Authorize any mass dismissals of employees in the Washington, D.C. metropolitan area;

(x) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in grade criteria;

(xi) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(A) Was involved directly in the adverse action, or performance rating appeal; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xii) Make the final decision on all classification appeals from agency appellate decisions;

(xiii) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(xiv) Authorize all employment actions (except LWOP) for the following positions:

(A) Schedule C; and

(B) Administrative Law Judge.

(xv) Authorize employment actions (accessions or extensions) for the following:

(A) Employees whose records are flagged; and

(B) Contract services.

(xvi) Authorize employment actions (accessions or extensions and transfers) for the following:

(A) Persons with criminal or immoral records;

(B) Persons separated for misconduct, delinquency, or resignation to avoid such action; and

(C) Veterans with dishonorable or other than dishonorable discharge.

(xvii) Authorize adverse actions for positions in GS–14–15 and equivalent;

(xviii) Approve assignments of White House details;

(xix) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(xx) Authorize long-term training in programs which require Department-wide competition;

(xxi) Issue all Coordinated Federal Wage Systems (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, D.C. Metropolitan Area; and

(xxii) Initiate and take adverse action in cases involving a violation of the merit system.

(10) As used herein, the term personnel includes:

(i) Position management;

(ii) Position classification;

(iii) Employment;

(iv) Pay administration;

(v) Automation of personnel data and systems design;

(vi) Hours of duty;

(vii) Performance evaluation and standards;

(viii) Promotions;

(ix) Employee development;

(x) Incentive programs;

(xi) Leave;

(xii) Retirement;

(xiii) Program evaluation;

(xiv) Social security;

(xv) Life insurance;

(xvi) Health benefits;

(xvii) Unemployment compensation;

(xviii) Labor management relations;

(xix) Intramanagement consultation;

(xx) Security;

(xxi) Discipline; and

(xxii) Appeals.

(11) Provide personnel services, as listed in paragraph (a)(10) of this section, and organizational support services, with authority to take actions required by law or regulation for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration, except the National Finance Center; and

(iv) Provide such of the above services, for any other officer or agency of the Department as may be agreed.

(12) Provide personnel services relating to defense responsibilities of the Department.

(13) The provisions of paragraphs (a)(9) (xiii) through (xvii) of this section shall not apply to positions in, or applicants for positions in, the Office of Inspector General.

(14) Maintain, review and update departmental delegations of authority.

(15) Authorize organizational changes which occur in:

(i) Departmental organizations:

(A) Service or office;

(B) Division (or comparable component); and

(C) Branch (or comparable component in departmental centers, only).

(ii) Field organizations:

(A) First organizational level; and

(B) Next lower organizational level—required only for those types of field

installations where the establishment, change in location, or abolition of same requires approval in accordance with Departmental Regulation 1010–1, available from the Chief, Information Management Division, Office of Information Resources Management, Room 403–W, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250.

(16) Formulate and promulgate departmental organizational objectives and policies.

(17) Provide staff assistance and support to the Department's Committee Management Officer.

(18) Formulate policies and procedures on the establishment and management of committees in the Department.

(19) Consult with GSA and Departmental agencies on the establishment and reestablishment of advisory committees.

(20) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(21) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(22) Determine and/or provide Departmentwide technical services and regional staff support for the safety and health programs.

(23) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(24) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(25) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(26) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(b) *Reservation*. The following authority is reserved to the Assistant Secretary for Administration: Authorize organizational changes occurring in a Department service or staff office which affect the overall structure of that service or office; i.e., require a change to that service or office's overall organization chart.

For Subparts A, B, C and D :

Dated: May 22, 1995.

Dan Glickman,

Secretary of Agriculture.

For Subpart E:

Dated: May 22, 1995.

Richard E. Rominger,

Deputy Secretary of Agriculture.

For Subpart F:

Dated: May 25, 1995.

Gene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

For Subpart G:

Dated: May 25, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

For Subpart H:

Dated: June 1, 1995.

Michael Taylor,

Acting Under Secretary for Food Safety.

For Subpart I:

Dated: May 30, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

For Subpart J:

Dated: May 25, 1995.

James R. Lyons,

Under Secretary for Natural Resources and Environment.

For Subpart K:

Dated: May 30, 1995.

Karl N. Stauber,

Under Secretary for Research, Education and Economics.

For Subpart L:

Dated: May 30, 1995.

Keith Collins,

Chief Economist.

For Subpart M:

Dated: May 31, 1995.

Anthony A. Williams,

Chief Financial Officer.

For Subpart N:

Dated: May 30, 1995.

Patricia Jensen,

Acting Assistant Secretary for Marketing and Regulatory Programs.

For Subpart O:

Dated: May 30, 1995.

P. Scott Shearer,

Acting Assistant Secretary for Congressional Relations.

For Subpart P:

Dated: May 31, 1995.

Warden C. Townsend, Jr.,

Assistant Secretary for Administration.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for FY 1995; Invitation for Applications: Public Housing Development; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3882; FR–3867–N–01]

Notice of Funding Availability for FY 1995; Invitation for Applications: Public Housing Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995 for public housing development; invitation for applications.

SUMMARY: This NOFA announces the availability of FY 1995 funding, and invites eligible public housing agencies (PHAs) to submit applications for public housing development. Applications are limited to the following Categories:

(1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937 (USHA);

(2) Replacements for homeownership transfers under the HOPE I Program, and homeownership sales under section 5(h) of the USHA;

(3) Headquarters Reserve: Unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts; and

(4) ''Other'' applications.

All successful applicants for categories (3) and (4) above will be required to participate in the Family Self-Sufficiency (FSS) program, unless granted an exception. This NOFA also provides instructions regarding the preparation and processing of applications. The Department is also encouraging applicants to form ''partnerships'' consisting of cooperative arrangements with community-based entities to provide housing, and is encouraging PHAs to engage in ''mixed income'' development (wherein public housing units are integrated within market-rate developments). This is being done by providing additional points for such efforts with respect to ''other'' applications (see sections III.E.5 and IV.E. of this NOFA).

This NOFA is not applicable to the Indian housing program.

DATES: Applications are due at the HUD Field Office on or before 3 p.m., local time, on July 31, 1995. See Section III of this NOFA for further information on application submission. If an application is mailed to the Field Office, the PHA must clearly write ''PUBLIC HOUSING DEVELOPMENT APPLICATION'' on the outside of the envelope and obtain a return receipt indicating the date and time of delivery. Hand delivered applications shall be date/time stamped and initialed by the employee receiving the application upon delivery.

The application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. PHAs should take this into account and submit applications as early as possible to avoid risk brought about by unanticipated delays or delivery-related problems. In particular, PHAs intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (Fax), COD, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Kevin Emanuel Marchman, Deputy Assistant Secretary, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4138, Washington, DC 20410. Telephone (202) 401–8812 (Voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577–0033 and 3577–0036.

I. Introduction

A. Authority

Sections 5 and 23 of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437c and 1437u); and sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Public housing development regulations are published at 24 CFR part 941; demolition/disposition regulations are published at 24 CFR part 970; section 5(h) regulations are published at 24 CFR part 906.

The regulations for the public housing FSS program are codified at 24 CFR part 962.

The Notice of Program Guidelines for the HOPE–1 program was published on January 14, 1992 (57 FR 1522) and codified as 24 CFR Subtitle A, Appendix A. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

The Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act of 1995 [(Pub.L. 103–327, approved September 28, 1994) (1995 Appropriations Act)] makes available $598 million of budget authority for Public Housing Development under section 5(a)(2) of the USHA. Some of the appropriated funds for annual contributions are to be derived from the recapture of prior year obligations or funds carried over from last year. Other adjustments within the Annual Contributions Account in 1995, including the addition of carryover funds, abate somewhat the impact of these factors. After these adjustments the amount available is $600,278,866. Of that amount, $74,126,542 already has been obligated to meet litigation needs, including replacement housing related to litigation. The Department expects to reserve or has reserved an approximately additional $145 million to meet litigation needs, including replacement housing related to litigation, or to redress mistakes in prior year awards. This would leave approximately $381 million available for commitments under this NOFA. The Department reserves the right to reserve additional funds prior to awards made under this NOFA for replacement housing proposals which clearly are essential to ending the isolation of large family public housing communities.

The Senate and the House of Representatives have passed legislation which would rescind part or all of the funding made available for public housing development by the 1995 Appropriations Act. The President vetoed this legislation on June 7, 1995. In the event rescissions become law, the Department will publish prompt notice of the impact on this NOFA.

Subject to any changes resulting from enactment of rescission legislation, the Department will make available at least $100 million for ''other'' applications. Up to .67 percent of the appropriated amount (up to $4,006,600) has been set aside for technical assistance and inspections. The Department expects all of the remaining funds to be needed and used for replacement housing (categories 1 and 2 above). Additional funds may be made available for ''other'' applications if the Department determines that funds remain after replacement housing and Headquarters Reserve needs are met. For additional details see the next sections below.

C. Fund Assignments

Section 213(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) requires that funds be allocated on a fair share basis, except for (a) amounts identified as Headquarters Reserve and (b) amounts determined incapable of geographic allocation.

1. Headquarters Reserve

Threshold-approvable applications for housing resulting from unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts shall be assigned Headquarters Reserve funding if available. (Headquarters Reserve amounts are limited in accordance with section 104 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989), to five percent of the financial assistance that becomes available under the USHA and section 101 of the HUD Act of 1965. Thus, Headquarters Reserve funding decisions will be made by Headquarters and may affect the distribution of grant authority shown above.)

2. Fair Share

Subject to changes which may result from enactment of a rescission law, which could affect the requirement to fair share funds, at least $100 million will be fair shared to approve category 4 (''other'') applications. These fair share funds will be distributed to Areas (formerly Regions) on the basis of the following fair share factors, which reflect the most recent decennial census data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other measurable conditions. Any unused assignments will be redistributed, proportional to need, among remaining Areas with approvable unfunded ''other'' applications. The Department may fair share additional funds later in the fiscal year to fund additional approvable ''other'' applications submitted in response to this NOFA if the Department determines that such funds will not be required for replacement housing and Headquarters Reserve needs.

Fair share and Headquarters Reserve funds are also subject to the requirement of section 213 of the HCD Act of 1974 that not less than 20 percent nor more than 25 percent of the HUD aggregate program funds covered by the statute be allocated for use in nonmetropolitan areas. Therefore, public housing development fund allocations to select ''other'' applications may be modified before assignment in order to ensure Departmental compliance with this statutory and regulatory requirement (see 24 CFR 791.403(a)).

Area	Fair-share factors (%)
New England	6.5
New York/New Jersey	18.1
Mid-Atlantic	8.8
Southeast	13.8
Midwest	15.7
Southwest	8.3
Great Plains	3.8
Rocky Mountain	2.6
Pacific/Hawaii	18.5
Northwest/Alaska	3.9
Total	100.0

3. Non-Fair Share

The Department expects that there will be a substantial demand during the fiscal year for Category 1, replacements for demolition/disposition subject to section 18 of the USHA, and category 2, replacements for homeownership transfers under the Hope I program and homeownership sales under section 5(h) of the USHA. This is projected to occur based on applications for demolition/disposition and homeownership replacement already received, because the Department and a number of PHAs are placing additional emphasis on the demolition and replacement of obsolete family housing which cannot provide a suitable living environment (e.g., obsolete family highrise developments or partial demolition of excessively dense, large and isolated lowrise developments), and because the future availability of a separate allocation of public housing development funding for replacement housing is uncertain. The Department will make all remaining public housing development funds, after subtracting funding for the Headquarters Reserve, $100 million for ''other'' applications if these applications are still to be funded (see above) and $4,066,600 for technical assistance, available as needed for categories 1 and 2. Various conditions regarding commitment of funding for replacement housing are listed in Section III of this NOFA below.

4. Remaining Balances

Any residual funds not reserved under categories 1, 2, 3, and 4 as described above will be added to the funds to be fair shared for any priority ''other'' approvable applications as determined by the Department.

D. Conformity to Regulations and NOFA Requirements

While conformity with 24 CFR part 941 is required, this funding effort is also subject to the additional specific requirements, consistent with the regulations, that are set forth in this NOFA. Applicants also should consult Handbook 7417.1 REV–1, and the FSS regulations codified at 24 CFR part 962. The selection criteria specified in this NOFA may not be added to or modified.

II. Application Process Overview

A. General

All applications shall be submitted to the appropriate Field Office by the application deadline date. The Field Office shall screen each application for completeness and will provide the PHA a 14-day opportunity to furnish missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a ''pass/fail'' threshold examination. Approvable category 1, 2, and 3 applications will be reported to Headquarters for further action.

Category 4 passing applications will be forwarded for rating to Rating Panel(s). One or more Rating Panels, comprised of HUD Field representatives appointed by Headquarters, shall be convened for the purpose. Category 4 applications will be rated by the Rating Panel(s) based on Field Office analyses. Headquarters will determine the funds required to approve category 1, 2, and 3 applications and select category 4 applications based on Rating Panel ratings and recommendations.

B. Categories of Applications

Each application must be for one of the following categories:

1. Replacement units for demolition/disposition approvals, subject to section 18 of the USHA (Category 1);

2. Replacement units for HOPE I or section 5(h) homeownership transfers or sales (Category 2);

3. Public housing to be funded from Headquarters Reserve (Category 3); or

4. ''Other'' development applications intended to increase the public housing stock (Category 4). Category 4 applicants are limited to no more than one application per locality, which may cover multiple sites.

C. Application Approval

1. All category 3 approvable applications will be funded, to the extent the required funds do not exceed statutorily set limits.

2. If there are insufficient funds to fund all category 1 and category 2 approvable applications, the

Department shall endeavor to fund category 1 and category 2 applications meeting the following descriptions: replacement related to litigation settlements or court orders, if the necessary funds have not yet been reserved; replacement for emergency demolition/disposition, if any; replacement for demolition/disposition to complete treatment of sites partially funded under the Urban Revitalization Demonstration Program authorized by the HUD Appropriations Acts of 1993, 1994 and 1995 or partially funded for comprehensive modernization or major reconstruction activities; replacement for obsolete family highrises; replacement for essential public housing density reduction at large family lowrises or as part of other efforts to end the isolation of large family public housing communities; prior replacement housing obligations; and category 2 replacement applications for homeownership, particularly where the transfer of property will occur this fiscal year and the units in question have not yet been replaced. Of these categories, replacement related to litigation settlements or court orders will be funded first.

3. Category 4 (other) applications will be funded up to the fair share amounts for each Area.

4. Any funds not required for categories 1, 2, or 3 or initially allocated to categories 4 or technical assistance as outlined above will be utilized for any additional ''other'' approvable applications as determined by the Department.

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions (see 24 CFR part 4); civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the Congressional notification process is completed.

E. Records Retention

Applications and materials related to applications (e.g., Field Office analyses, application scoring sheets, and notifications of selection/non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12.

III. Application Requirements

A. All Applicants

Each application must specify the housing type (new construction, rehabilitation, or acquisition), development method (conventional, turnkey, or acquisition), and community for which the project is proposed. No more than one housing type, development method, and locality may be proposed for an application. Each such application shall consist of an original and two copies, and must include the following:

1. Cover Letter. The cover letter must identify the category of application (see Section II.B. of this NOFA for a description of the categories; see also subparagraph 6 of Section III.A of this NOFA).

2. Application-Form HUD 52470. The application must be signed by the person authorized and dated and include the information as specified in the form.

3. Evidence of Legal Eligibility. If it has not previously done so, the PHA must document that it is legally organized. A current General Certificate (Form HUD 9009) must be submitted.

4. Cooperation Agreement (Form HUD 52481). The PHA must document that the number of units requested, along with units in management and other units in development, are covered by Cooperation Agreements.

5. PHA Resolution In Support of the Application (Form HUD–52471). Under this resolution, the PHA agrees to comply with all requirements of 24 CFR part 941 (see also paragraph 6 of this Section III.A). By executing the PHA Resolution, the PHA also certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulations at 28 CFR part 35.

6. Front-End Funds. If front-end funds are being requested, the PHA must so state in its cover letter; should the PHA desire the project only if front-end funds can be approved, the PHA must so state. The Form HUD–52471 (PHA Resolution) must refer to the request, and include Form HUD–52472 (Local Governing Body Resolution/Transcript of Proceedings) approving the request.

7. Drug-Free Workplace. The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

8. Certification for Contracts, Grants, Loans and Cooperative Agreement (Form HUD–50071). In accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA, for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

9. Form SF–LLL, Disclosure of Lobbying Activities. Also in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF–LLL if funds other than federally appropriated funds have been paid or will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

10. Disclosure of Government Assistance and Identity of Interested Parties (Form HUD 2880). The PHA must submit the Applicant/Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

11. Family Self-Sufficiency (FSS). Section 23 of the USHA requires PHAs that are awarded new public housing units to implement an FSS program. Applicants for Category 3 (Headquarters Reserve) or Category 4 (Other) funds must certify that they will comply with 24 CFR part 962, which requires successful applicants to initiate or expand an FSS program for the number of families that equals the total number of units they have been awarded (unless otherwise excepted).

B. Applications for New Construction

In accordance with section 6(h) of the USHA, new construction may be engaged in only if the PHA demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the PHA determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood. Therefore, every application for a new construction project (conventional or turnkey) must be accompanied by either the information described in paragraphs B.1 and B.3 of this section, or, at the applicant's option, the information

described in paragraphs B.2 and B.3 of this section:

1. A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement); or

2. A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or rehabilitation; and

3. A statement that:

(a) Although the application is for new construction, the PHA will accept acquisition of existing housing or rehabilitation, if HUD determines the PHA cost comparison or certification of insufficient housing does not support approval of new construction; or

(b) The application is for new construction only. (In any such case, if HUD cannot approve new construction under section 6(h) of the USHA, the application will be rejected.)

C. Replacement Housing Applications

1. Cover Letter. For both category 1 and category 2 applications, the cover letter must state whether the demo/dispo or transfer/sale application (to demolish/dispose of units, or to transfer/sell units) (hereinafter referred to as the ''underlying application'') has been approved; the date of approval; the project number and the name of the project being replaced; and whether it is being replaced in whole or in part. If the underlying application was not approved at the time the replacement housing application is filed, the cover letter must state the date the underlying application was submitted or the estimated date the underlying application will be submitted for consideration. Category 1 or 2 applications will not be funded unless the underlying application is submitted by the time funding selections are made. The Department may make a funding award if the underlying application has not yet been approved, if all aspects of the underlying application other than compliance with section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, are approvable by August 1, 1995.

2. Section 5(j) Certification. The PHA must certify that the units requested are specifically required in FY 1995 either to meet the one-for-one replacement requirement of section 18 of the USHA to replace public housing demolition/disposition; or to meet the requirements of section 304(g) of the USHA to replace existing public housing approved in FY 1995 or earlier for homeownership transfer under HOPE 1, or for sale under section 5(h) of the USHA.

3. Replacement Application Under Section 18. A PHA submitting a replacement housing application under section 18 (category 1) must demonstrate that the replacement units, alone or together with other identified replacement units, will implement the PHA's Replacement Housing Plan submitted and approved or expected to be submitted and approved under 24 CFR 970.11, including requirements that such units:

(a) Are for no fewer units (or portion thereof approved by HUD) than the number of units to be demolished or disposed of; and

(b) Will house at least the same number of individuals and families that could be served by the housing to be demolished or disposed.

4. Replacement Application for Homeownership Transfers or sales. Applicants submitting applications to meet the requirements of section 304(g) of the USHA to replace existing public housing approved in FY 1995 or earlier for homeownership transfer under HOPE 1, or for sale under section 5(h) of the USHA, must provide the following: a schedule, by federal fiscal year, of the number of units previously transferred and/or expected to be transferred consistent with the actual progress achieved under the approved HOPE 1 or Section 5(h) plan; a listing of the number of replacement housing units already received and accounted for under all the allowable replacement housing options as well as the balance of units not yet replaced; and the number of public housing development units and/or Section 8 units now being requested for homeownership replacement. (The Section 8 units will not be awarded under this NOFA.)

5. Statement Regarding Consistency with HUD Priorities. Appropriations for replacement housing are encouraged to include a statement describing consistency of the application with the replacement housing categories described in paragraph II. C. 2. of this NOFA.

6. Impact of Pending Legislation. The Congressionally approved rescission bill includes a proposal to repeal replacement housing requirements for underlying applications approved on or prior to September 30, 1995. In the event this proposal becomes law, the Department will issue notice of any changes required or authorized for replacement housing applications to be submitted in response to this NOFA.

D. Applications for Units to be Funded from Headquarters Reserve

1. Cover Letter. A PHA submitting a category 3 application shall identify the purpose of the application (see Section I.C.1 of this NOFA).

2. Section 5(j) Certification. The PHA may certify that the units requested are required to comply with court orders or directions of the Secretary; or, as appropriate, the section 5(j) certification applicable to category 4 (Other) applications (see Section III.E.2. below). Court orders must be identified.

(**Note:** Category 3 needs typically are not fulfilled through the application process.)

E. ''Other'' Applications

Applicants are encouraged to review the rating criteria (Section IV.E. of this NOFA) to ensure rating factors have been addressed in the application. ''Curable technical deficiencies'' (Section IV.B. of this NOFA) relate only to items that would not improve the substantive quality of applications relative to rating factors. A PHA may file only one application per locality under this category.

1. Cover Letter. Applicants for ''other'' public housing development units (category 4), must state whether they will accept fewer units than applied for. Refusal to accept fewer units may result in an application not being selected if funds are not sufficient for the full number of units.

2. Section 5(j) Certification. The PHA must certify to one of the following, pursuant to section 5(j) of the USHA (select E.2.a or E.2.b.):

(a) The units requested (limited to 100 or fewer) are needed for family housing to satisfy demands not being met by the section 8 existing or voucher rental assistance programs; *or*

(b) 85 percent of the PHA's dwelling units (select (1), (2), or (3)):

(1) Are maintained in substantial compliance with the section 8 housing quality standards (24 CFR 882.109); or

(2) Will be so maintained upon completion of modernization for which funding has been awarded; *or*

(3) Will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under section 14 of the USHA (or a comparable State or local government program), and that there is a reasonable expectation, as determined in writing by HUD, that such application would be approvable; or will be so maintained upon completion of modernization under the Comprehensive Grant program.

3. Funding Preference in Accordance With Section 6(p). Section 6(p) of the USHA requires HUD to provide a

funding preference for applications in areas with an inadequate supply of housing for use by low-income families (i.e., a ''tight'' housing rental market). The implementation of this preference shall be in accordance with the process described in Section V.A.2 of this NOFA.

(a) The PHA must furnish data relative to rental vacancy rates in the market area where the project is proposed. This data should include a description of the data sources and methods used to obtain survey information. (It is recommended that PHAs consult with local community development agencies relative to their housing needs before submitting applications under this NOFA, since most of these agencies will have participated in the development of a Comprehensive Housing Affordability Strategy (CHAS) or Consolidatd Plan.)

(b) Factors such as the following will provide evidence of conditions which, when taken together, will demonstrate a pattern of inadequate supply (generally, no one factor, taken alone, is conclusive):

(1) The current rental housing vacancy rate is at a low level (typically six percent or lower) which results in housing not being available for families seeking rental units (unless the housing market area is not growing and, as a result, is experiencing low levels of demand);

(2) The annual production of rental housing units is insufficient to meet the demand arising from the increase in households, or, where there is little or no growth, is insufficient to meet the demand arising from net losses to the available inventory;

(3) The shortage of housing is resulting in rent increases exceeding those increases commensurate with rental housing operating costs; and

(4) A significant number or proportion of section 8 certificate/voucher holders are unable to find adequate housing because of the shortage of rental housing, as evidenced by PHA data showing a lower-than-average percentage of units under lease and a longer-than-average time required to find units (typically, less than 85 percent lease up within 60 days).

4. Documentation to Demonstrate Need. The PHA must submit documentation, such as waiting list description or PHA vacancy rate data, to demonstrate need for the proposed public housing, to assist the HUD Field Office in its determination of need and market in accordance with Section IV.C.8.b of this NOFA.

5. Additional Rating Points. Category 4 (other) applications may obtain additional rating points (see Section IV.E.8 of this NOFA) if the PHA furnishes additional data regarding any of the following:

(a) ''Partnerships.'' PHAs are encouraged to form ''partnerships'' consisting of cooperative or contractual arrangements with community-based entities for the purpose of developing housing so that the housing fits into the community and is seen as an integral part of it. ''Community-based entities'' include private non-profit or for-profit entities with experience in the development of low and moderate income housing, or that are skilled in the delivery of services to families who are residents of public housing. ''Cooperative or contractual arrangements'' include those that will facilitate development (including management of the units) that will enhance the long-term viability of the development; and those arrangements that the PHA has for the delivery of services (such as child care, education, and economic opportunities) made available to residents of public housing. The PHA should indicate who the entity (or entities) are, the qualifications of the entity and its principals, and the role they play or will play in the development, management, or service delivery process which will lead to better acceptance of public housing in the community. Such cooperative arrangements require substantial involvement by the non-PHA partner in at least one of the following areas: design, management, development, site selection, representation to the community, or service delivery. 24 CFR Part 85, regarding procurement, applies to any such cooperative arrangement. With respect to the delivery of services, costs for such services are not eligible to be paid from public housing development funds. The PHA must also certify that its selection of the cooperative entity (or entities) was in compliance with State and local law.

[**Note:** If procurement requirements cannot be complied with before the application deadline date, the PHA may submit a statement with its application describing the anticipated arrangement and certifying that it will undertake such a cooperative relationship and that such a relationship will comply with federal/state and local law.]

(b) Mixed Income Development. In order to encourage the development of public housing in metropolitan areas that will be less identifiable as public housing, PHAs are encouraged to develop units whereby public housing would be mixed with market-rate dwellings so that they are indistinguishable. Specifically, in order to receive the maximum points for this factor, a PHA must propose to develop or acquire units or sites in developments where the non-public housing units require incomes that, on average, are at or above 80 percent of median. A PHA also may receive points for acquisitions of units or sites in developments where the non-public housing units require incomes that, on average, are at or above 50 percent of median.

(c) Past compliance with section 3. The PHA may submit evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. If the PHA does not have development experience, it may instead submit evidence related to such experience with the modernization program.

(d) Proposed compliance with section 3. The PHA may submit its goals for complying with section 3 employment and training with regard to the public housing development application being filed under this NOFA.

(e) Support for local initiatives. If the application proposes a project which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Empowerment Zone/Enterprise Community, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding, the PHA should describe the activity.

(f) Resident Initiatives. If the PHA is working with residents to establish and/or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations), the activities should be described.

(g) Preservation of Low-Income Housing. The PHA should describe any means by which use of public housing development funds will preserve low-income housing resources currently available to the community.

F. Applications Covering State or Locally-Assisted Units

Applications for conversion of State- or locally-assisted units or federally assisted public housing are eligible for assistance under this NOFA.

G. Major Reconstruction of Obsolete Projects (MROP).

The Department will fund no MROP in fiscal 1995, unless the Department determines that such funding is necessary from Headquarters Reserve in

relation to litigation settlements, court orders or litigation avoidance.

H. Ineligible Applications

Applications for intermediate care facilities and nursing homes may not be approved under this NOFA.

IV. Field Office Processing of Applications

A. Submission of Applications

The cover letter of all applications must be marked with the date and time of receipt, along with the initials of the Field Office employee accepting the application. Applications received after the date and time specified at the beginning of this NOFA will be returned to the applicant. The PHA should obtain a ''Return receipt'' or similar evidence of delivery when applications are delivered via other means (U.S. Mail, private mailing firms, etc.).

B. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted.

(a) If any application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office.

(b) Curable technical deficiencies relate only to items that would not improve the substantive quality of a category 4 application, relative to the ranking factors.

(c) If Form HUD 52470 (Application) is missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. If other forms are missing, such as Form HUD 50070 (Drug Free Workplace Certification) or if there is a technical mistake, such as no signature, or an unauthorized signatory on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. An application that does not meet the applicable threshold and NOFA requirements after the 14-day technical deficiency period will be rejected from processing and determined to be unapprovable.

3. Applications proposing housing in areas also served by the Rural Housing and Community Development Service (RHCS) (formerly known as Farmers Home Administration) are subject to coordination with RHCS to assure that assisted housing resources to be provided are not duplicative. The State RHCS office shall be advised that an application for public housing has been received and is being considered for funding, and be provided an opportunity to comment on the application.

4. The responsibility for submitting a complete application rests with the PHA. The failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of failure to submit a complete application.

C. Application Threshold Approvability.

After initial screening and upon expiration of the deficiency ''cure'' period, complete applications will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be rejected from processing and determined to be unapprovable. All applications for public housing development funds must meet the following thresholds to be determined approvable:

1. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must be legally eligible to develop, own, and operate public housing under the USHA and have:

(a) Approved and current PHA organization documents;

(b) Local cooperation agreements to cover units under management, in development, and the units requested (Form HUD 52481), and any other required local authority, or evidence the Department finds sufficient that such cooperation agreements can be obtained in a timely fashion;

(c) A properly executed and complete PHA Resolution (Form HUD 52471), required with respect to all applications and referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested. (Note: By executing the PHA Resolution, the PHA certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulation at 28 CFR part 35. The PHA Resolution also certifies to the PHA's intent to comply with all requirements of 24 CFR part 941. These requirements include: nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135.

2. The category of application is eligible under this NOFA (see Section II.B of this NOFA).

3. If new construction (conventional or turnkey) has been applied for, the PHA has provided a cost comparison or a certification with documentation (see Section III.B. of this NOFA), and has stated what is to be done with the application if new construction is not approvable.

4. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

5. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

6. The following certifications are included in the application and have been executed by the appropriate person(s):

(a) Form HUD–50070, Drug-Free Workplace;

(b) Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

(c) Form SF–LLL, Disclosure of Lobbying Activities, if applicable;

(d) Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

(e) FSS certification;

(f) Section 5(j) certification appropriate to the category of application;

(g) Certification that the application is consistent with Environmental Justice Executive Order 12898, in that the proposed public housing will be developed only in environmentally sound and desirable locations and will avoid disproportionately high and adverse environmental effects on minority and low-income communities.

7. The PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) There is no pending civil rights suit brought against the PHA by the Department of Justice; or

(e) There is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

8. For ''other'' applications only:

(a) The Field Office must determine that the PHA has or will have the capability to develop and manage the proposed housing. The Field Office shall determine capability based upon the PHA's overall score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), the PHA's most recent fiscal audit, and outstanding HUD monitoring findings. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

(b) The Field Office must determine that there is a need and a market for the proposed household type and bedroom sizes, taking into consideration the documentation submitted by the PHA on housing supply and demonstration of need, any local plans, and other assisted housing (e.g., HUD or RHCS) existing and proposed (including housing funded but not completed).

9. With respect to all applications the Department reserves the right to require the PHA to utilize an alternative administrator to carry out the applicable public housing development program.

D. Threshold Approvable Applications

Applications in categories 1, 2, and 3 will be determined approvable if they successfully pass the threshold review. Threshold-approvable applications in category 4 (''other'') will be reviewed and analyzed by the Field Office.

E. ''Other'' Development Applications

Threshold approvable ''Other'' applications will have points assigned by a Rating Panel(s) on the basis of Field Office analysis and PHA documentation relating to the following criteria:

Criteria	Points
1. *Relative Need.* The application proposes a development for a locality which has been previously under-funded for the household type (family or elderly) requested, relative to the need for housing for the same household type in the respective metropolitan or non-metropolitan portion of the Field Office's jurisdiction. [Select (a), (b) or (c)]:	
(a) Housing need in the locality specified in the application has been severely under-funded. (A locality with a percentage of need served that is equal to or less than one-half the Field Office percentage will be determined to be severely under-funded.);	20
or	
(b) Housing need in the locality specified in the application has received a proportionate share of funding or has been moderately under-funded. (A locality with a percentage of need served that is equal to or less than the Field Office percentage, but greater than one-half that percentage will be determined to be moderately under-funded.);	10
or	
(c) Housing need in the locality specified in the application has been over-funded. (A locality with a percentage that is greater than the Field Office percentage will be determined to have been over-funded.);	0
2. *Vacancy Rate.* Select (a) or (b):	
(a) The adjusted vacancy rate in public housing developments under management (as such term is defined in the Public Housing Management Assessment Program, 24 CFR 901 *et. seq.*) is not greater than 3 percent, indicating that the PHA will and can fully utilize the units for which it applied;	10
or	
(b) The adjusted vacancy rate in public housing developments under management is greater than 3 percent but less than 6 percent (or two units if that is greater);	5
3. *Large-Family Housing.* The application is for a public housing development comprising 51 percent or more three bedroom or larger units;	15
4. *Relocation.* The proposed public housing development would primarily assist households displaced or to be displaced by Federal action or a natural disaster in a Federally declared disaster area;	15
5. *Low Density Family Housing.* The application proposes scattered site development to expand housing opportunities;	20
6. *PHA Development Experience.* [Select (a), (b), or (c)]	
(a) The PHA scored at least 90 percent (''A'') in Indicator 12 (Development) of PHMAP;	15
or	
(b) The PHA's latest PHMAP score for Indicator 12 (Development) is between 80 and 89 percent; or the Field Office has no information on the PHA's previous development experience to rate the PHA under paragraph (a) above; however, the application demonstrates the capability for, and the expectation of, expeditious quality or other development experience, or submitted a development management contract with an experienced development project manager);	10
or	
(c) The PHA's latest PHMAP score for Indicator 12 (Development) is between 60 and 79 percent; or the PHA has no development experience under either paragraph (1) or (2) above, but the PHA has evidenced staff capability and organization that demonstrates the PHA has the capability for, and the expectation of, expeditious quality development or has submitted a proposed development management contract;	5
7. *PHA Management Experience.* [Select (a), (b), or (c)]	
(a) The PHA's latest PHMAP score (excluding development) is 90 percent or better; and there were no Inspector General audit findings during the PHA's last fiscal audit; and there are no outstanding HUD monitoring findings;	20
or	
(b) The PHA's latest PHMAP score (excluding development) is between 80 and 89; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved;	10
or	
(c) Choose (1) or (2):	
(1) The PHA's latest PHMAP score (excluding development) is between 60 and 79; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved;	5
or	
(2) The PHA has no public housing in management, but has management experience in the section 8 program and management reviews or Inspector General audit findings (if any) are being addressed satisfactorily;	5

Criteria	Points
8. *Other Criteria.* (Select any that apply)	
(a) The PHA has certified that it will form, or submit evidence that it has formed, a ''partnership'' (i.e., a cooperative relationship) with an entity that will play a substantial role in development, design, management, or representation to the community and has described the partnership's role; or the PHA has certified that it will form, or submit evidence that it has formed, a ''partnership'' with an entity that plays a substantial role in the delivery of services and that these services will be available to residents of the project under development, and has described the partnership's role.	15
(b) Choose (1) or (2) if applicable:	
(1) The PHA has certified that it will develop or acquire units or sites in developments where the non-public housing units require incomes that, on average, are at or above 80 percent of median;	15
or	
(2) The PHA has certified that it will develop or acquire units or sites in developments where the non-public housing units require incomes that, on average, are at or above 50 percent of median;	10
(c) The PHA has submitted evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. (If the PHA does not have development experience, it may instead submit evidence related to its experience with the modernization program.);	10
(d) The application proposes a public housing development which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Empowerment Zone/Enterprise Community, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding;	15
(e) The Field Office, based on documentation submitted by the PHA, has determined that the PHA is working with residents to establish and/or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations);	10
(f) Preservation of low-income housing. The PHA demonstrates that commitment of development funds will preserve low-income housing resources currently available to the community.	20
Total Possible Points	200

F. Field Office Reports

1. Category 1, 2, and 3 Applications. Each Field Office shall forward its lists (by category) of fair-share exempt threshold-approvable applications to Headquarters within two weeks of the deficiency ''cure'' period. The lists shall include the project number, total number of units and units by bedroom size, structure type(s), cost areas, funding required and the metropolitan/non-metropolitan designations for each application. Category 1 and 2 applications shall also identify the underlying project and its current status (e.g., approved (date), under review in Field Office, etc.).

2. Category 4. All Field Office reports to Rating Panels on threshold-approvable ''other'' applications shall be submitted within three weeks of the deficiency ''cure'' period and include the information described in paragraph F.1., above, the analysis of each application, and Field Office recommendations for funding.

V. Rating Panels

A. Rating Panels

1. General. The Rating Panel(s) shall compile data furnished by Field Offices for category 4 (other) applications, and rate each application based on Field Office analyses, comments, and recommendations.

A list of rated applications shall be forwarded to Headquarters, with copies of Field Office reviews and recommendations, and justifications for Rating Panel rankings. Headquarters shall not modify ratings of category 4 (''other'') applications unless a gross error has occurred.

Examples of ''gross errors'' include, but are not limited to, errors in calculating the vacancy rate in the proposed community, or assigning points for development/management experience based on a PHMAP score that was successfully appealed, or simple errors of arithmetic.

Changes in ratings shall be fully documented, and a copy of the memorandum authorizing the change (and the basis thereof) shall be sent to the Rating Panel and to the Field Office for inclusion in the file and be made available for public inspection. Category 4 applications shall be approved within Areas, to the extent fair share funds are assigned, as follows:

2. ''Tight Market'' Determination. Headquarters will separate applications (category 4) on the basis of ''tight rental housing market'' and Rating Panel ratings and Headquarters rankings, and approve them (in the following order) to the extent fair share funds are assigned to their respective Area:

(a) Applications within the same Area in tight rental housing markets which receive 100 or more rating points;

(b) All other applications in the same Area, in rank order, depending on ''metropolitan'' or ''non-metropolitan'' funding available.

B. Reservation of Funds

Funds will be reserved in an amount equal to the total development cost limit for the number, structure type, and size of units being approved, ''trended'' to take into consideration the anticipated cost of construction at the time the construction/rehabilitation contract is expected to be executed; acquisition reservations will be trended to take into account anticipated cost variations between fund reservation and Date of Full Availability (DOFA). The trend shall be calculated by multiplying the project total development cost limit by 6 percent (1.06), rounded to the nearest $50. No amendment funds will be available for these projects in the future.

C. Partial Funding

Partial funding of highly ranked ''other'' applications within an Area may occur (so long as such projects are determined viable and the PHA has indicated willingness to accept fewer units) to facilitate the funding in rank order of additional applications for highly ranked projects. With respect to categories 1, 2 and 3, partial funding may be provided where the Department determines this to be appropriate.

VI. Checklist of Application Submission Requirements

A. Submission Requirements

PHAs may use the following application checklist which enumerates the submission requirements of Section III of this NOFA:

1. Cover letter;
2. Form HUD 52470, Application for Public Housing Development;
3. Evidence of legal eligibility (if not previously evidenced) with a current General Certificate (HUD 9009);
4. Evidence that the number of units in management, in development, and being requested in this application are covered by Cooperation Agreements (HUD 52481) and any other State/local requirements have been met;
5. HUD 52471, PHA Resolution in Support of Public Housing;
6. HUD 52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA. (Note: If front-end funds are requested, the HUD 52471 must be appropriately modified. See Section III.A.6. of this NOFA.);
7. PHA statement identifying its funding preferences for particular sites if an application covering more than one site is being submitted for category 4 (see Section II.B of NOFA). (Note, however, that no more than one application per locality may be filed under category 4.);
8. PHA statement whether it will accept fewer ''other'' units than applied for (category 4);
9. HUD 50070, PHA Certification for a Drug-Free Workplace;
10. HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;
11. Form SF–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;
12. Form HUD 2880, Disclosure of Government Assistance and Identity of Interested Parties;
13. Section 5(j) certification appropriate to the category of application;
14. Certification of consistency with Environmental Justice Executive Order 12898;
15. Evidence of inadequate housing supply (i.e., a ''tight'' rental housing market), for category 4 (''Other'') units;
16. Evidence (such as waiting list information or PHA vacancy rate data) of need and market for the units requested for category 4 applications;
17. Section 6(h) cost comparison justification, if new construction is requested;
18. FSS program certification if for Category 3 (Headquarters Reserve) or Category 4 (''Other'') units;
19. Replacement housing exhibits, if applicable (see section III.C);
20. (Optional) For replacement housing applications, documentation how the application addresses HUD priorities (see section II.C.2).
21. (Optional) For ''other'' applications, documentation to address the rating factors (see section IV.E.).

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VIII. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities: The Byrd Amendment

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. As noted earlier a certification is required, at the time the application for funds is made, that Federally appropriated funds are not being or have not been used in violation of section 319 and that *disclosure* will be made of payments for lobbying with other than Federally appropriated funds. Also, again as noted earlier, there is a standard disclosure form, SF–LLL, ''Disclosure Form to Report Lobbying,'' which must be used to disclose lobbying with other than Federally appropriated funds.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

F. Section 112 of the HUD Reform Act 1989

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of ''person'' to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4. That regulation applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

H. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. Documentation and Public Access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Dated: May 30, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–14732 Filed 6–12–95; 3:59 pm]

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federal register

Friday
June 16, 1995

Part IV

Federal Election Commission

11 CFR Part 106, et al.

Public Financing of Presidential Primary and General Election Candidates; Final Rule

FEDERAL ELECTION COMMISSION

[Notice 1995–9]

11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038, and 9039

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations governing public financing of presidential primary and general election candidates. These regulations implement provisions of the Presidential Election Campaign Fund Act [''Fund Act''] and the Presidential Primary Matching Payment Account Act [''Matching Payment Act'']. The revised rules reflect the Commission's experience in administering these programs during the 1992 election cycle, and are intended to anticipate questions that may arise during the 1996 presidential election cycle.

DATES: Further action, including the publication of a document in the **Federal Register** announcing the effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038 and 9039 governing public financing of presidential campaigns. On October 6, 1994, the Commission issued a Notice of Proposed Rulemaking [''NPRM''] in which it sought comments on proposed revisions to the public financing regulations. 59 FR 51006 (October 6, 1994). Subsequently, the Commission extended the comment period to provide the regulated community with additional time to comment on the proposed rules. 59 FR 64351 (December 14, 1994). The Commission received written comments from Hervey W. Herron, Common Cause, the Center for Responsive Politics, Public Citizen, the White House Counsel's office, the Republican National Committee, Huckaby and Associates, the Democratic National Committee and Lyn Utrecht of Oldaker, Ryan & Leonard in response to the Notice. The Commission held a public hearing on February 15, 1995, at which four witnesses presented testimony on the issues raised in the NPRM.

The Commission also received two Petitions for Rulemaking that addressed related issues. *See* Notice of Availability on Petition for Rulemaking filed by the Center for Responsive Politics [''CRP''], 59 FR 14795 (March 30, 1994); Notice of Availability on Petition for Rulemaking filed by Anthony F. Essaye and William Josephson, 59 FR 63274 (December 8, 1994). In addition to the comments noted above, the Commission received comments from the Internal Revenue Service, Public Citizen, Common Cause and a joint comment from the Republican National Committee and the Democratic National Committee in response to the CRP Rulemaking Petition. The Commission received comments from the Internal Revenue Service and the Republican National Committee in response to the Essaye/Josephson Petition.

The CRP Petition for Rulemaking sought the abolishment of the general election legal and accounting compliance fund [''GELAC''] and is discussed in connection with 11 CFR 9003.3, below. The Essaye/Josephson petition asked the Commission whether expenses incurred in connection with the meeting of the Electoral College are covered by the Fund Act or the Federal Election Campaign Act [''FECA''], 2 U.S.C. 431 *et seq*. This is a complex question that the Commission believes deserves further consideration. Therefore, the issue has been dropped from this rulemaking and will be addressed in a separate rulemaking document.

Sections 9009(c) and 9039(c) of Title 26, United States Code, and 2 U.S.C. 438(d) require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 12, 1995.

Explanation and Justification

The Commission has revised several aspects of its regulations governing publicly-financed presidential primary and general election candidates. A detailed, section by section analysis of these changes appears below. The document then discusses some additional proposals that were considered in the course of this rulemaking that were not ultimately incorporated into the final rules.

Part 106—Allocations of Candidate and Committee Activities

Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds

The Commission is adding a sentence to paragraph (a)(1) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. See discussion of 11 CFR 9034.4(e), below. The new sentence states that expenditures required to be allocated to the primary election under these new requirements shall also be allocated to particular states in accordance with 11 CFR 106.2.

Part 9002—Definitions

Section 9002.11 Qualified Campaign Expense

The Commission is adding a conforming amendment to paragraph (c) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. The amendment notes that certain expenditures formerly covered by this paragraph will now be attributed under these new guidelines. See discussion of 11 CFR 9034.4(e), below.

Part 9003—Eligibility for Payments

Section 9003.1 Candidate and Committee Agreements

The new rules contain a number of changes in section 9003.1. In the interests of clarity, the Commission is adding a comma in the last sentence of paragraph (b)(4), which relates to candidate and committee agreements to furnish certain documentation to the Commission. The rules also slightly reword paragraph (b)(9) to more clearly indicate that candidates must agree to pay any civil penalties arising from violations of the FECA, whether provided for in a conciliation agreement or imposed in a judicial proceeding.

Paragraph (b)(10) has been added to require that, as a precondition of their receiving public funds, presidential candidates agree that they will prepare all of their television commercials with closed captioning or so that they are otherwise capable of being viewed by deaf and hearing impaired individuals. Congress added this requirement to 26 U.S.C. § 9003(e) when it enacted section 354 of the Legislative Branch

Appropriations Act of 1992, Pub. L. No. 102–393, 106 Stat. 1764 (1992).

One commenter requested that committees be allowed to pay the costs of closed captioning with funds from their general election legal and accounting compliance fund. However, the Commission views this not as a compliance cost, but rather as a means for committees to get their message out to those who otherwise would not hear it. Thus it is a qualified campaign expense.

Section 9003.3 Allowable Contributions

On March 1, 1994, the Commission received a Petition for Rulemaking from the Center for Responsive Politics requesting that the Commission repeal its rules providing for the use of privately-financed general election legal and accounting compliance funds in presidential campaigns. Specifically, the petitioner sought repeal of 11 CFR 100.8(b)(15) (last two sentences), 106.2(b)(2)(iii)(last sentence), 9002.11(b)(5), 9003.3(a), and 9035.1(c)(1).

The Commission published a Notice of Availability on March 30, 1994, seeking statements in support of or in opposition to the Petition. 59 FR 14794 (March 30, 1994). The Commission received four comments in response to the Petition. Two comments were supportive, while one opposed the reversal of the Commission's longstanding policies regarding legal and accounting costs. The Commission subsequently incorporated the Petition into this rulemaking, and sought further comment on a number of options. The Commission received seven additional comments on the issues raised in the Petition.

The petitioner argued that the Commission's rules allowing private contributions of up to $1,000 for the GELAC undermine the ability of the public financing laws to achieve the objective of eliminating the corrupting influence of large contributions in presidential elections. The Commission's reasons for establishing the GELAC are explained below and in the 1980 Explanation and Justification, 45 FR 43371 (June 27, 1980). The decision to allow the GELAC to accept contributions up to $1,000 is based on the structure of the FECA. As the Supreme Court recognized in *Buckley* v. *Valeo,* 424 U.S. 1, 58 (1976), Congress created contribution limits to combat the reality or appearance of improper influence. Nevertheless, through the NPRM, the Commission sought evidence either supporting or refuting the petitioner's claim that the privately-funded GELAC undermines the public financing regime by allowing the actuality and the appearance of improper influence in presidential elections. No evidence was presented.

As explained more fully below, the Commission has decided not to eliminate the GELAC. The Commission agrees with the commenters who felt that the separate fund for compliance has worked well since the GELAC rules were promulgated in 1980. To repeal them would force presidential campaigns to devote some of their public funds for compliance expenses, instead of using public monies for campaign expenses. One commenter noted that in the absence of a GELAC, committees would face extraordinary pressure to minimize the amount spent on compliance so as to devote as much money as possible to campaigning. Reducing compliance funds may very well reduce committees' abilities to keep good records, thereby increasing the difficulty and duration of post-election audits. Section 431(9)(B)(vii) of the FECA recognizes an exception for the cost of certain legal and accounting compliance services that is not recognized for other types of costs. The elimination of monetary contributions of $1,000 or less for compliance purposes could force some committees to turn to much larger in-kind donations of legal and accounting services to ensure that their compliance obligations are satisfied. *See* 2. U.S.C. § 431 (8)(B)(ix) and (9)(B)(vii). The GELAC is also used to make repayments, which would still need to be funded from private sources if the campaign had no public funds remaining to pay those amounts.

The Petition for Rulemaking also charged that these regulations permit evasion of the prohibition on accepting contributions to defray qualified campaign expenses established by the Fund Act. 26 U.S.C. § 9003(b). Furthermore, the Petition claims that the Commission's regulations violate the spending limits established by the FECA. 2 U.S.C. § 441a.

The Commission is not persuaded that the creation and operation of the GELAC is beyond its statutory authority or inconsistent with the public funding regime established by the Fund Act and the FECA. The regulations first establishing a separate GELAC were duly promulgated pursuant to 2 U.S.C. § 437d(a)(8) and 26 U.S.C. § 9009(b) for the practical reasons explained above. They were transmitted to Congress on June 13, 1980, together with the Explanation and Justification, for the required legislative review period. They became effective on September 5, 1980, after neither House of Congress disapproved them under 26 U.S.C. § 9009(c)(2). This is, as the Supreme Court has noted, an ''indication that Congress does not look unfavorably'' upon the Commission's construction of the Act. *FEC* v. *Democratic Senatorial Campaign Committee,* 454 U.S. 27, 34 (1981). *See also, e.g., Sibbach* v. *Wilson,* 312 U.S. 1, 16 (1941) (''That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found''). Subsequently, in legislative recommendations to Congress, the Commission has identified funding for compliance activities as an area Congress may wish to clarify, but Congress has not done so to date.

Consequently, the revised rules follow the previous provisions by retaining sections 100.8(b)(15) (last two sentences), 106.2(b)(2)(iii) (last sentence), 9002.11(b)(5), 9003.3, and 9035.1(c)(1). For the reasons set forth, the Petition for Rulemaking filed by the Center for Responsive Politics is denied.

Comments were also requested on several alternative revisions to the GELAC. For example, the NPRM raised the possibility of limiting the amount raised and spent for compliance to a fixed percentage of the general election spending limit. Although one commenter supported limiting the GELAC to 10% of the general election spending limit, or less, several others believed a limit would be artificial, unworkable and unfair, particularly since several factors make compliance costs unpredictable. Hence, to some extent, these costs cannot be controlled by the committee or known in advance. Other commenters opposed limiting the GELAC because they believed limits would not overcome fundamental defects in the current GELAC rules, and that the rules should be repealed.

The Commission agrees that compliance costs can be unpredictable, and therefore concludes that limiting the amount or percentage of the GELAC is not advisable.

The NPRM also expressed concern that fundraising activities for the GELAC could be used to generate electoral support for the candidate's campaign. Accordingly, the NPRM sought comments on whether to continue to permit the GELAC to pay the entire amount of these costs, or whether a fixed percentage of GELAC fundraising costs should be paid by the general election campaign committee.

In response, the petitioner and two commenters questioned the appropriateness of allowing fundraising costs for the GELAC to be paid for by the GELAC on the grounds these

expenses are campaign expenses that should be paid by the general election campaign and subject to the spending limits. On the other hand, several witnesses and commenters pointed out that effective fundraising necessarily involves setting forth what the candidate stands for. Some felt it is not appropriate to use public funds to raise private contributions that are used solely for legal and accounting compliance purposes.

The Commission has concluded that the rules regarding fundraising for the GELAC should remain largely unchanged. The Commission's audit and enforcement processes provide the appropriate mechanisms for ensuring that GELAC fundraising activities (or any other type of expenses paid from GELAC funds) do not involve campaigning for the candidate's election.

However, changes are being made regarding the information to be disclosed in solicitations to prospective contributors. Former section 9003.3(a)(1)(i)(A) required solicitations to clearly state that the contributions are solicited for the GELAC. The NPRM proposed adding language to let contributors know that their money would be used solely for legal and accounting costs. Those supporting the Petition for Rulemaking did not believe the proposed change would resolve the problems they perceived. Others noted that if the required language is lengthy enough, nobody will read it. Hence, the final rules have been modified to require committees to tell contributors that federal law prohibits the use of private contributions to pay a publicly-funded general election candidate's campaign expenses. This new language more clearly conveys to contributors that their contributions to the GELAC will only be used to ensure compliance with the law. The GELAC solicitation must also indicate how contributors should make out their checks, so as to avoid potential confusion regarding the contributor's intent.

Please note that the provisions regarding redesignations and transfers of primary funds to the GELAC in paragraphs (a)(1)(ii)–(iv) have been reorganized for clarity. In addition, new language has been added to resolve questions regarding depositing designated and undesignated contributions in the GELAC. Paragraph (a)(1)(i)(C) states that contributions must be designated in writing for the GELAC to be deposited directly into the GELAC. All contributions not designated in writing for the GELAC must be deposited initially in a primary election account and reported as such. An explanation of the term ''designated in writing'' for the GELAC is being added as new paragraph (a)(1)(vi). Please note that 11 CFR 110.1(b)(4) covers designations for a presidential primary election. Contributions made out to the candidate's name or the primary committee, unless properly designated in writing for the compliance fund, cannot be deposited in it, and can be transferred to it only if they are properly redesignated by the contributor for the GELAC. Undesignated contributions cannot be deposited in the GELAC, regardless of when they are made or received, and can be transferred to it only if the committee receives a proper GELAC redesignation from the contributor. An exception to the redesignation requirement exists for leftover primary contributions made during the matching payment period; they may be transferred to the GELAC without securing redesignations if they exceed the amount needed to pay remaining net outstanding campaign obligations for the primary and any repayments. In addition, the revised rules permit contributions made after the date of nomination, but not designated in writing for the GELAC, to be redesignated for the GELAC only if they are not needed to pay remaining net outstanding campaign obligations from the primary campaign. The rules also specify that contributions designated in writing or redesignated for the GELAC cannot be matched.

Current paragraphs (a)(2)(i) (A) through (H) of section 9003.3 set forth the permissible uses of GELAC funds. The Petition for Rulemaking, and several commenters, urged the Commission to delete current paragraph (H) allowing GELAC funds to be used to pay unreimbursed costs of providing transportation for the Secret Service and national security staff. Other commenters and one witness urged the Commission to retain this provision, given the alternative of requiring campaigns to pay these costs from their limited campaign funds, even though transporting Secret Service and National Security staff does little to further the campaign.

This provision has been retained in the final rules because the limits on the amounts that can be reimbursed for transporting the Secret Service and National Security staff may be less than the actual cost to the campaign, and because the campaign must transport security personnel who do not provide a campaign-related benefit. However, GELAC funds may not be used to pay transition costs (costs incurred by the President-elect in preparation for the assumption of his or her official duties which are not provided for under the Presidential Transition Act of 1963) (cf. AO 1980–97); legal defense fund expenses (expenses incurred in a judicial, civil, criminal, administrative, state, federal, or Congressional investigation, inquiry or proceeding not related to the Presidential campaign) (cf. AO 1979–37); or legal expenses not related to ensuring compliance with the FECA and the Fund Act, such as contract litigation.

In addition, the Commission has reduced from 70% to 50% the standard amount that the GELAC may pay for computer-related costs, and the corresponding exclusion from the spending limits. See 11 CFR 9003.3(a)(2)(ii)(A), (b)(6) and (c)(6). Some expressed concern that this allocation demonstrated the impossibility of separating compliance expenses from campaign expenses, thereby necessitating repeal of the GELAC rules. One commenter argued that the allowance should be reduced to 10%. On the other hand, others urged the Commission to increase the allowance to 80% or 90% to more accurately reflect the burden of compliance.

The Commission believes that a reduction from 70% to 50% accurately reflects the increased usage of computers for non-compliance campaign-related activities such as scheduling of campaign-related events, electronic communications, word processing, office automation, maintaining political databases, etc. Moreover, campaign committees must incur computer costs to perform basic accounting purposes irrespective of the need to comply with the campaign financing laws. Please note, however, that committees may still deduct a higher amount if they can show that their computer-related compliance costs are higher.

Section 9003.3(a)(2)(iv) has been modified slightly to clarify that funds remaining in the GELAC may only be used to pay debts remaining from the primary or for other lawful purposes pursuant to 2 U.S.C. § 439a if all GELAC expenses have been paid. Two commenters argued that this allows wealthy donors to evade the primary contribution limits and results in corruption of the public financing system. As explained above, the Commission believes that this provision is in keeping with the purpose and structure of the public funding statutes and notes that Congress did not disapprove of the Commission's regulations on transfers of surplus GELAC funds.

Finally, two citations contained in 11 CFR 9003.3(a)(2)(iii) are being revised. The first sentence of this paragraph referred to paragraphs 9003.3(a)(2)(i) (A) through (E). This is being updated to read, ''11 CFR 9003.3(a)(2)(i) (A) through (F) and (H).'' Also, the previous citation to paragraph 9003.3(a)(2)(i)(F) in the second sentence has been changed to refer to paragraph 9003.3(a)(2)(i)(G). Portions of paragraphs (b) and (c) of section 9003.3 have been replaced with language indicating that certain provisions in paragraph (a) apply to minor party candidates and situations where major party candidates do not receive full public funding.

Finally, the Commission is deleting the reference to final repayment determinations contained in former paragraph (a)(2)(ii)(B), now paragraph (a)(2)(ii)(G), as that term does not appear in the revised repayment process. *See* discussion of 11 CFR 9007.2, below.

Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds

Former paragraph (a) of this section stated that certain expenditures for polling could be considered qualified campaign expenses for the general election, regardless of when the results of the polling were received. However, the Commission has now decided that polling expenditures should be attributed to the primary or the general election limits based on when the results are received. See discussion of 11 CFR 9034.4(e)(2), above.

The reference to polling in this paragraph has therefore been deleted. The Commission is adding new language referring readers to the new provisions at 11 CFR 9034.4(e)(2), to better alert them to this change.

Section 9003.5 Documentation of Disbursements

Section 9003.5(b)(1)(i) sets forth the documentation required for disbursements in excess of $200. Under the previous rules, a canceled check, negotiated by the payee, was required in most situations, but not when the committee presented a receipted bill from the payee stating the purpose of the disbursement. The revised rules in this section require committees to provide canceled checks negotiated by the payees for all disbursements over $200. One witness opposed these changes, and urged more flexibility in the requirements for documentation. However, this change will assist the Commission's audit staff in verifying that public funds are spent on qualified campaign expenses. Committees should already have canceled checks in their possession, so production would not be burdensome. New paragraph (b)(1)(iv) indicates that the purpose of the disbursement must be noted on the check if it is not included in the accompanying documentation. Please note that, as in the past, the revised rules require that documentation in addition to the committee's check be provided for disbursements exceeding $200.

Paragraph (b)(3) of this section has also been changed to include individuals who are advanced $1000 or less for travel and subsistence in the definition of payee. The $500 limit in the previous rules was raised to reflect current prices.

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

Section 9004.4 Use of Payments

Winding Down Costs; Gifts and Bonuses

New paragraph (a)(5) of section 9004.4 addresses the use of public funds to pay for gifts and bonuses for campaign staff and consultants. It generally follows new language in section 9034.4, which is discussed below. New language is being added to section 9004.4(a) to allow the GELAC to pay 100% of salary and overhead expenses incurred after the end of the expenditure report period. These expenses are presumed to be solely to ensure compliance with the FECA and the Fund Act.

One commenter questioned why computer expenses were not included in the proposed language when they were included in the corresponding primary regulations. The rules have been revised to recognize that the GELAC may pay 100% of computer expenses incurred after the end of the expenditure report period.

Responsibility for Lost or Damaged Equipment

Accounting procedures employed by the Commission make allowance for reasonable loss and normal damage of equipment leased or purchased by a campaign. However, the Commission has at times encountered incidents involving lost or damaged equipment that do not fall into these categories. The Notice of Proposed Rulemaking therefore sought to clarify how such situations should be handled in the audit process.

The Commission first sought comment on whether, as a precondition for the receipt of public funds, the candidate should agree to meet certain standards in handling public monies as well as in overseeing the use of and accounting for public funds. Such standards would have been specified at 11 CFR 9003.1(b). However, the Commission now believes the question of liability for lost or damaged equipment is best handled by amending 11 CFR 9004.4(b) to clarify that the cost of lost or misplaced items may be considered a nonqualified campaign expense for purposes of these rules.

The Commission recognizes that there are varying degrees of responsibility in this area. The new rules therefore state that certain factors should be considered prior to any determination that a repayment is required. In particular, whether the committee demonstrates that it made careful efforts to safeguard the missing equipment would be of primary importance in this regard. Whether the committee sought or obtained insurance, the type of equipment involved and the number and value of items that were lost will also be among the factors considered in making this determination. However, the Commission has dropped as a stated factor the value of the lost equipment as a percentage of the total value of the equipment leased or owned by the committee, as the loss of even a small percentage of a committee's equipment can involve a sizeable amount of public funding.

One commenter argued that the phrase ''used for any purpose other than * * * to defray [ ] qualified campaign expenses'' in 26 U.S.C. §§ 9007(b)(4) and 9038(b)(2), stating the reasons for which the Commission can require a repayment, connotes intentional conduct, so the Commission is barred from ever requiring a repayment for lost or misplaced items. While the word ''purpose'' can connote ''intent,'' the Commission does not believe the two are synonymous in this context.

The Commission routinely determines that funds have been ''used for the purpose'' of nonqualified campaign expenses, regardless of the specific intent behind particular disbursements. Barring the Commission from inquiring into such situations would run counter to its long-standing practice in this area, and would also be inconsistent with the responsibility to ensure that public funds are properly used.

One commenter proposed a number of safeguards a committee could adopt to help ensure that losses are kept to a minimum. These include (1) maintaining a written inventory of equipment, (2) establishing and disseminating written procedures for handling of equipment by the staff, (3) maintaining and implementing security

procedures that limit access to the premises on which equipment is used and ensuring that equipment cannot be removed from the premises without appropriate written authorizations, (4) limiting use of vehicles to designated individuals, (5) maintaining a check-out system for portable equipment such as cellular telephones, and making individuals personally liable for return of the equipment, (6) obtaining insurance where economically prudent in accordance with the standards of the insurance industry, (7) establishing a procedure for reconciling inventory of equipment, in accordance with recognized accounting standards, when offices are closed, and (8) establishing procedures for handling of funds, including the handling of cash and writing of checks, that generally conform to recognized standards for internal controls established by the American Institute of Certified Public Accountants.

These are sound business practices that, if followed, should greatly reduce the possibility of loss. The Commission plans to recommend in the Financial Control and Compliance Manuals prepared in connection with the 1996 Presidential election that committees implement these or comparable standards.

This commenter further argued that, if a committee could demonstrate ''substantial compliance'' with these guidelines, the Commission should avoid an ''item by item'' examination of lost or misplaced items. While committees that follow these standards should have little problem with loss, the fact that they have done so should not preclude the Commission from ever challenging a loss, especially where costly items are involved.

The Notice sought comment on another approach, that of limiting the dollar amount of lost property that could be considered a qualified campaign expense. If a committee lost goods worth more than the specified amount, any amount over that figure would be a nonqualified campaign expense. This would have the advantage of focusing the Commission's resources on only the more serious instances, while recognizing that some loss is inevitable in large, lengthy campaigns.

The Commission believes this approach has merit, but feels it is inappropriate to include an actual dollar figure in the text of the rules. Rather, the Commission may address this matter in the context of the confidential materiality thresholds established in connection with each audit cycle.

Conforming Amendment

The Commission is moving paragraph (c) of 11 CFR 9004.4 to new 11 CFR 9007.2(a)(4). This paragraph, which deals with permissible sources of repayments, is more properly located in the section dealing with repayments.

Section 9004.5 Investment of Public Funds

Section 9004.5 of the existing regulations allows a committee to invest public funds or use them in other ways to generate income, provided that an amount equal to the net income derived from those investments, minus any taxes paid, is paid to the Treasury. Section 9007.2(b)(4) also lists the receipt of any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5 as one of the bases for requiring committees to make payments to the Treasury.

The final rules revise section 9004.5 to clarify that the payment requirement applies to any use of public funds that results in income to the committee, regardless of whether the committee engaged in that use with the intention of generating income. The final rules also contain a conforming amendment to the introductory language of section 9007.2(b)(4), clarifying that the receipt of income from any use of payments from the Fund is a basis for requiring payment to the Treasury. The Commission received no comments on these provisions.

These revisions ensure that any income received through the use of pubic funds benefits the pubic financing system. If a committee loses an item that is insured, and the insurance proceeds exceed the cost of replacing the item, such excess will be considered income under sections 9004.5 and 9007.2(b)(4). However, these rules are not meant to require payment of income that qualifies as exempt function income under section 527(c)(3) of the Internal Revenue Code, 26 U.S.C. 527(c)(3), such as receipts from fundraising activities permitted under 11 CFR 9003.3.

Section 9004.6 Expenditures for Transportation Made Available to Media Personnel; Reimbursements

Section 9004.6 of the existing rules has been reorganized for clarification purposes with only minor substantive changes. The revised version operates largely the same as the existing rule. Generally, expenditures for transportation and other services provided to media representatives, Secret Service personnel, and national security staff will be qualified campaign expenses and, with the exception of costs related to Secret Service and national security personnel, will count toward the overall expenditure limits in section 9003.2. However, committees may seek reimbursement for these expenses, and may deduct reimbursements received from media representatives from the amount subject to the spending limit, in accordance with paragraph (c) of the revised rule.

Paragraph (b) limits the amount of reimbursement a committee can seek from a media representative to 110% of that representative's pro rata share of the actual costs of the transportation and services made available. Any reimbursement received in excess of that amount must be returned to the media representative under paragraph (d)(1). Paragraph (b)(2) sets out the formula for determining a media representative's pro rata share of the costs of transportation and services made available.

Paragraph (c) states that the committee may deduct the reimbursements received from media representatives from the amount of expenditures subject to the overall limitation. The rule limits the amount of this deduction to the actual cost of the transportation and services provided to media representatives. However, the rule also allows the committee to deduct an additional amount of the reimbursements received from media representatives, representing the administrative costs of providing these services and seeking reimbursement for them. Generally, this deduction is limited to 3% of the actual cost of the transportation and services provided to the media representatives. However, the committee may deduct an amount in excess of 3% if it can document the total amount of administrative costs actually incurred.

Paragraph (c)(2) clarifies that ''administrative costs'' includes all costs incurred by the committee in providing these services and seeking reimbursement for them. Thus, any costs that are not part of the actual cost of the transportation and services made available are administrative costs, regardless of whether they are incurred directly by the committee or by an independent contractor hired to make travel arrangements and/or seek reimbursements. If the committee uses a contractor, and the contractor charges the committee a fee for providing these services, the fee charged is part of administrative costs. The contractor's expenses and fees are not part of the actual costs for which the committee may seek reimbursement under paragraph (b)(1). Likewise, if the committee accepts credit card payments

from media representatives, any credit card fee, commission or discount is an administrative cost.

Paragraph (d) requires the committee to return any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to the media representative providing the reimbursement. In addition, any amount in excess of the amount deductible under paragraph (c) that has not been returned to a media representative must be paid to the Treasury. For example, if a representative's pro rata cost is $1,000, the committee can bill the representative for $1,100. Assuming the committee claims the standard 3% to cover its administrative costs, it can deduct up to $1,030 from the amount of expenditures subject to the limit. Any reimbursement received in excess of $1,100 must be returned to the media representative. Any portion of the remaining amount that exceeds the $1,030 that can be deducted from the spending limit must be paid to the Treasury.

Paragraph (e) requires the committee to report disbursements made in providing these services as expenditures under 11 CFR 104.3(b)(2), and to report any reimbursements received as offsets to operating expenditures under 11 CFR 104.3(a)(3)(ix).

The final rule contains two changes to the existing rule that reflect current practice. Generally, a media representative's pro rata share of the actual cost of transportation and services made available is determined by dividing the total costs of the services provided by the total number of persons to whom the services are made available. However, the new rule contains a special formula for determining the pro rata cost of transportation on a government conveyance to a city not served by regularly scheduled commercial airline service. See 11 CFR 9004.7(b)(5)(i)(C). Committees should not include national security staff in the total number of persons to whom the services were made available when determining pro rata cost in this situation. This formula places incumbent candidates on an equal footing with challengers, who are not required to transport national security personnel. *See* discussion of section 9004.7, below.

The new rule also clarifies that the administrative costs incurred by the committee in providing these services and seeking reimbursement for them must be included in the amount reported as an expenditure under paragraph (e).

Two commenters expressed general support for the Commission's efforts to reorganize this section. However, they also urged the Commission to treat billed out unreimbursed media transportation expenses the same as unreimbursed expenses associated with transporting Secret Service and national security personnel, by excluding these expenses from the spending limit and allowing the use of GELAC funds to reimburse the committee for these expenses.

The Commission has not adopted these recommendations because committees are now better able to recover the full cost of providing these services to media representatives than they were in the past. Committees can require media representatives to provide advance payment through the use of a credit card. If a representative fails to pay, the committee may, if it chooses, deny the representative access to the services being provided.

A review of one 1992 general election committee, and its associated primary committee, clearly demonstrates that this policy does not impose a financial burden. The two committees sought reimbursement from media representatives for a combined total of about $7 million in transportation expenses. Both committees collected more than 99% of the amount they billed. Since the rules allow the committees to bill the representatives for 110% of actual cost, they received about $7.5 million in reimbursements. Each committee received more than 109% of the cost of the services they provided. Thus, notwithstanding the failure of some representatives to provide reimbursement, the committees received payments substantially in excess of the costs they incurred.

In contrast, the amount of reimbursement received from Secret Service and national security personnel is limited by the rules of other federal agencies, not the FEC, and in some cases is not enough to cover the costs of transporting these persons. Allowing committees to use GELAC funds to cover the unreimbursed amounts ensures that transporting these persons does not deplete the public fund.

Consequently, the Commission has decided to continue its current policy of including unreimbursed media transportation expenses in the amount subject to the spending limit. It has also decided not to allow committees to pay these unreimbursed expenses with GELAC funds.

Section 9004.7 Allocation of Travel Expenditures

The NPRM sought comments on modifying 11 CFR 9004.7 to address several issues regarding the cost of campaign-related travel using government airplanes, helicopters and other vehicles. Please note that these rules apply to travel on federal government conveyances, and state or other government conveyances. The rules contemplate that for plane flights between cites served by a regularly scheduled commercial airline service, the campaign must reimburse the appropriate governmental entity for the first class airfare, and that this amount is treated as a qualified campaign expense. New language in section 9004.7(b)(5)(i) specifies that, for travel by airplane, the amount of the lowest unrestricted non-discounted first class commercial airfare available for the time traveled is to be used. Discounted fares that are subject to restrictions on the dates and times of travel, or restrictions on changing flights, are not comparable to the service provided when the campaign uses a government conveyance. Several commenters and witnesses supported this new language.

Under section 9004.7(b)(5)(v), campaign committees are responsible for determining the first class fare at the time of the flight to ensure that the right amount is paid to the appropriate government entity, and to ensure that they maintain documentation supporting these amounts. The lowest unrestricted non-discounted first class airfare is available from several sources including travel agents, and on-line services. Unfortunately, it is not possible to specify a single source for this information.

Questions also arose regarding cities that are served by regular air service, but first class flights are not available. In this case, the revised rules specify that committees should use the lowest unrestricted non-discounted coach fare available for the time traveled. This approach is consistent with the valuation method established by the Select Committee on Ethics of the United States Senate for the use of private aircraft. *See* Interpretive Ruling No. 412, Select Committee on Ethics, United States Senate, 101st Cong., 1st Sess., S. Prt. 101–18 at 251–52 (1989). It is also consistent with the valuation methods used by the House of Representatives' Committee on Standards of Official Conduct with respect to gifts of private transportation not associated with official travel. *See*, Valuation of Gifts of Transportation on Private Aircraft, Committee on

Standards of Official Conduct, Letter dated June 11, 1987. Several witnesses and commenters supported this approach.

For cities not served by regularly scheduled commercial service, the rules continue to specify that the amount to be reimbursed is the charter rate. The NPRM had proposed using the charter rate for a comparable airplane of similar make, model and size. Although that would be consistent with the approaches used by the Congressional Ethics Committees, several commenters and witnesses noted that there are no aircraft comparable to Air Force I and Air Force II, which are specially designed in terms of communications equipment and security. It was also pointed out that the Commission's proposals diverged from the approach taken in AO 1984–48 and the rules in 11 CFR 106.3(e).

It is not feasible to follow precisely the same approach as 11 CFR 106.3(e) because that rule governs non-presidential candidates who are not accompanied by the Secret Service. Accordingly, the final rules have been revised to indicate that the charter rate may be used for an aircraft sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service. Under this approach, campaigns having the use of government aircraft will incur approximately the same cost as campaigns that must charter a plane sufficient to hold campaign staff, media and Secret Service personnel.

The revised regulations address several questions that have arisen regarding the costs of ''positioning'' flights needed to bring the government aircraft from one stop where it dropped off the candidate and campaign staff to another stop where it will pick them up to continue the trip or return to the point of origin. New language in section 9004.7(b)(5)(ii) incorporates the Commission's previous practice regarding positioning flights. Thus, committees must pay the appropriate government entity for the greater of the amount billed by the government entity or the applicable fare for one passenger. This approach recognizes that positioning flights are campaign-related, and therefore these costs are properly treated as qualified campaign expenses. Several commenters and witnesses argued there should be no charge for positioning flights because commercial airlines do not charge to bring their planes to the city of departure. However, this argument fails to reflect the fact that charter services do build these costs into their price structures. Several commenters also noted that the Commission has not previously required committees to pay the costs of fuel and crew time for positioning flight. The proposed language regarding the payment for fuel and crew costs has been deleted from the final rules because it would be burdensome for committees to absorb these costs.

Paragraph (b)(5)(iii) in section 9004.7 contains provisions regarding travel on federal or state government conveyances other than airplanes. For travel by helicopter or ground conveyance, the commercial rental rate should be paid for a conveyance sufficient in size to hold those traveling on behalf of the campaign, plus media representatives plus Secret Service personnel. This paragraph has been modified from the language previously included in the NPRM because there is no conveyance comparable in terms of security and communications to those used by the President and Vice President. Additional guidance on this area can be found in Advisory Opinion 1992–34. Please note that in the case of a presidential candidate who is also a state official, the equivalent rental conveyance does not need to be able to hold state police or other state security officers.

Section 9004.7(b)(5)(iv) continues to require payment for the use of accommodations paid for by a government entity. Under 11 CFR 100.7(a)(1)(iii)(B), the committee should use the usual and normal charge in the market from which it ordinarily would have purchased the accommodations. The term ''accommodations'' includes both lodging and meeting rooms.

New paragraph (b)(8) of section 9004.7 explicitly reflects Commission policy that travel on corporate conveyances is governed by 11 CFR 114.9(e). One witness suggested changing section 114.9(e) to include the lowest unrestricted nondiscounted coach fare for travel on corporate aircraft between cities where there is no first class service. Such a change is beyond the scope of this rulemaking.

Finally, new language in paragraph (b)(2) provides additional guidance as to when a stop will be considered campaign-related. It follows the Commission's previous decisions in AOs 1994–15 and 1992–6 that campaign activity includes soliciting, making or accepting contributions, and expressly advocating the nomination, election or defeat of the candidate. *See, e.g.,* AOs 1994–15, 1992–6, and opinions cited therein. In these opinions, the Commission also indicated that the absence of solicitations for contributions or express advocacy regarding candidates will not preclude a determination that an activity is campaign related. Hence, the revised rules include other factors the Commission has considered in determining whether a stop is campaign-related. Please note that this section continues to provide that incidental campaign-related contacts during an otherwise noncampaign-related stop do not cause the stop to be considered campaign-related.

While several witnesses and commenters favored inclusion of express advocacy and contribution solicitations as tests of whether a stop is campaign-related, some felt that the additional factors were subjective, workable, failed to provide sufficient guidance, and exceeded the Commission's authority given the language in *Buckley*, 424 U.S. at 79–80, equating ''expenditure'' with express advocacy, not mere issue advocacy. Several suggested creating a rebuttable presumption that a stop is not campaign-related in the absence of express advocacy or the solicitation, making or acceptance of contributions. The difficulty with this type of narrow interpretation of *Buckley* is that if a stop is not campaign-related because there is no express advocacy of the candidate's selection or defeat, then the costs of the stop cannot be considered qualified campaign expenses, and cannot be paid for from public funds.

Please note that paragraphs (b)(2) and (b)(3) of this section have been revised to indicate what should be shown on the itinerary, and to indicate what the official manifest created by the government or charter company must be made available for Commission inspection.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

The NPRM sought comments on a proposal to require primary committees to include a categorical breakdown of their estimated winding down costs when submitting a NOCO statement. The Commission proposed this change in order to obtain more useful information about the committee's remaining obligations.

The Commission has decided to require this breakdown, and has incorporated it into paragraph 9034.5(b) of the primary regulations, which are discussed in detail below. In addition, the Commission has decided to require general election candidates to submit this information with the statements of net outstanding qualified campaign expenses [''NOQCE''] they submit after the general election. Under paragraph 9004.9(a) of the final rules, a general

election committee must include a breakdown of the estimated winding down costs listed on the NOQCE statement by category and time period. The committee must provide estimates of quarterly or monthly expenses from the date of the NOQCE statement until the expected termination of the committee's political activity. These estimates must be broken down into amounts for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing, and storage.

Requiring this breakdown will assist the Commission in ensuring that public funds are used only for qualified campaign expenses. It will also ensure that candidates who are eligible for post-election funding receive the amount to which they are entitled.

The Commission is also amending paragraph (d)(1) of this section to provide for a straight 40% depreciation of capital assets that committees include on their post-election statements of net outstanding qualified campaign expenses. Previously, committees could claim a higher depreciation under certain circumstances. This amendment conforms to the Commission's policy of adopting ''bright line'' rules where feasible throughout the public funding process. The changes to this section generally follow those to 11 CFR 9034.5(c)(1), discussed below.

Part 9006—Reports and Recordkeeping

Section 9006.3 Alphabetized Schedules

The final rules include new section 9006.3, which requires that presidential campaign committee reports containing schedules generated from computerized files list in alphabetical order the sources of the receipts, the payees and creditors. For individuals, including contributors, the list must be in alphabetical order by surname. However, presidential campaign committees are not required to computerize their records if they do not wish to do so. The new provision is intended to remedy situations in which, for example, committees maintain computerized records of contributors in alphabetical order, but file schedules with the order of the names scrambled. That practice makes it very difficult, if not impossible, to locate particular names on the committee's reports if the schedules are voluminous, thereby thwarting the public disclosure purposes of the FECA and making it more difficult to monitor compliance. Alphabetization of lists of contributors is required for contributions to minor and new party candidates. Lists of contributors to the GELAC must also be alphabetized. In the event of a deficiency in the Presidential Election Campaign Fund, where private contributions may be accepted by major party candidates, alphabetical lists of contributors are also required. Unless there is a deficiency in the Fund, major party candidate who accept public funding for the general election may not accept private contributions.

There was no consensus among the witnesses and commenters on this proposal. While some supported it because it furthers full public disclosure, others opposed it on the grounds that it could increase computer costs and increase reliance on computer-driven accounting systems. The Commission notes that committees able to demonstrate such increased computer costs may claim a higher exemption for compliance expenses. One witness stated that accounting software does not currently alphabetize disbursements, debts or obligations, and suggested that committees indicate on their reports whether disbursements are listed by date of invoice, check number or date of payment. However, Commission inquiries indicate that commercial spreadsheet packages sort data in many different ways, including alphabetically. Given that most presidential campaigns use a variation of commercially available software, it should not be difficult for them to use standard database management software to alphabetize the information included on disclosure reports.

Part 9007—Examinations and Audits; Repayments

Section 9007.1 Audits

Further Streamlining the Audit Process

As noted in the NPRM, the Commission took several actions in the 1990–91 review of the public funding rules that have substantially shortened the audit process. These included easing compliance with the state-by-state allocation rules set forth at 11 CFR 106.2, and clarifying the use of subpoenas in presidential audits. *See* 56 FR 35899–900, 35903–04 (July 29, 1991).

The NPRM sought comments on other changes that might further streamline this process. These included publicly releasing the Interim Audit Report (''IAR''), moving up the committee's oral presentation to some earlier point in the process, and compressing or eliminating some stages of the process.

Most of the commenters who addressed this issue opposed further changes to the audit process at this time. They noted that, in part because of changes in the last cycle, the Commission was able to approve all Final Audit Reports for the 1992 presidential elections substantially faster than in earlier cycles. They also noted that issues tend to fall away as the process continues, and argued that the size of the audits and the number of issues involved justify the length of the current process.

Nevertheless, the Commission believes that it is appropriate to further condense the audit process. This will result in more timely audits and a more efficient use of Commission and committee resources.

Accordingly, the Commission is compressing the audit process by eliminating the current IAR. Briefly, the revised process entails an expanded exit conference, including a written Exit Conference Memorandum (''ECM'') prepared by Commission staff and presented to the committee at the exit conference; an opportunity for the committee to respond to the ECM; an audit report that contains the Commission's repayment determination; the opportunity for an administrative review of that determination, including the opportunity to request an oral hearing; and a post-review repayment determination and accompanying statement of reasons. These stages are discussed in greater detail below.

Former 11 CFR 9007.1(b)(2)(iii) provided for an exit conference at which Commission staff discussed preliminary findings and recommendations with committee representatives. The revised paragraph states that Commission staff will in addition prepare a written ECM that discusses these findings and recommendations, and provide a copy of the ECM to committee representatives at the exit conference. The listing of potential subjects to be addressed at the exit conference includes those formerly listed with regard to the IAR, but deletes references to Commission findings and enforcement actions, as the Commission will not have made any findings or instituted any enforcement actions at this point of the process.

Revised paragraph (c) gives the candidate and his or her authorized committee 60 calendar days following the exit conference to submit in writing legal and factual materials disputing or commenting on the findings presented in the ECM. The candidate should also provide any additional documentation requested by Commission staff during this period. The language in former 11 CFR 9007.1(c) regarding preparation of an IAR has been deleted, as the IAR is not longer part of the audit process.

Revised paragraph (d) contains many of the procedural provisions formerly found in 11 CFR 9007.1(c), which discussed preparation of the IAR. This paragraph has been renamed ''Preparation of audit report,'' and refers to the report prepared following consideration of written materials submitted in response to the ECM. Revised paragraph (d)(1) notes that this report may address issues other than those discussed at the exit conference. This report also contains the repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1).

In addition, former 11 CFR 9007.1(e)(2) has been moved to new paragraph (d)(2). The language has been revised to conform with the Commission's practice of issuing audit reports in their entirety, including all matters noted in the audit process. Former 11 CFR 9007.1(e)(4) has been moved to new paragraph (d)(3), and the language revised to clarify that addenda to the audit report may include additional repayment determination(s).

Revised paragraph (e), which discusses the public release of the audit report, corresponds to former 11 CFR 9007.1(e) (1) and (3), and has been slightly reworded to conform to the new procedures.

Sampling

The Commission is also adding new paragraph (f) to 11 CFR 9007.1 to incorporate sampling and disgorgement procedures that were adopted for use during the 1992 presidential election cycle.

The Commission has a statutory obligation to complete the audits of publicly-funded committees in a thorough and timely manner. In the past, the resources required to conduct reviews of the contributions received by presidential committees contributed to the Commission's difficulty in fulfilling that obligation.

Beginning with the 1992 election cycle, the Commission began to make more extensive use of statistical sampling for audits of contributions received by publicly-financed presidential primary election committees, and to use the sample results to quantify, in whole or in part, the dollar value of any related audit findings. While the Commission continues to conduct a limited non-sample review of contributions received by these committees, most audit testing of contributions and supporting documentation is now done on a sample basis.

The Commission notes that this approach will apply in a general election only to contributions that need to be raised due to a deficiency in the Presidential Election Campaign Fund, to the GELAC, or to contributions raised by new or minor party candidates. See 26 U.S.C. §§ 9003(c)(2), 9006(c); 11 CFR 9003.2 (a)(2) and (b)(2), 9003.3 (b) and (c).

Some commenters argued that the Commission does not have the statutory authority to use statistical sampling in conducting its audits. However, the Commission has been given broad authority to audit publicly-funded presidential and vice presidential campaigns, *see* 26 U.S.C. § 9007(a), which authority includes the right to utilize generally accepted auditing standards in conducting these audits.

The use of statistical sampling is legally acceptable for projecting certain components of a large universe, such as excessive and prohibited contributions. *See, e.g. Chavez County Home Health Service* v. *Sullivan*, 931 F.2d 904 (D.C. Cir. 1991) (sampling audit used to recoup Medicaid overpayments to health care providers); *Michigan Dep't of Education* v. *U.S. Dep't of Education*, 875 F.2d 1196 (6th Cir. 1989) (sampling of 259 out of 66,368 total payment authorizations upheld as proper basis for determining amount of misexpended federal funds in vocational-rehabilitative program); *Georgia* v. *Califano*, 446 F. Supp. 404 (N.D. Ga. 1977) (Medicaid overpayments).

Most of these cases require the agency to demonstrate that it is infeasible to conduct a 100% review. *See, e.g., Chavez*, 931 F.2d at 916. While the Commission was able to conduct a more extensive review in the past, the increasing volume of records to be checked has now made this impossible. An accountant who testified at the Commission's public hearing stated that the Commission had no option but to use sampling, because of the large number of records involved in presidential campaign audits—a recent campaign with which he had been worked had involved over 200,000 contributions and tens of thousands of disbursements. These figures are not unusual in presidential campaign audits.

One commenter argued that these cases, which involve recoupment of government overpaid funds, should not be used to justify the use of sampling to determine excessive and illegal contributions which come from private sources. However, for statistical purposes there is no distinction between these two situations.

Some commenters also questioned the validity of the statistical sampling technique currently employed in this process. However, the fact that the technique may be used in dissimilar programs, or programs seeking other types of information, does not mean that it is not appropriate for use in this context.

There is substantial judicial precedent to the effect that, when considering a challenge to individual accounting rules, the reviewing court must defer to agency expertise. In *A.T.&T. Co.* v. *United States*, 299 U.S. 232 (1936), the Supreme Court stated that before it would overrule an agency's decision to use a certain accounting system, that system ''must appear to be so entirely at odds with fundamental principles of correct accounting as to be the expression of whim rather than an exercise of judgment.'' *Id.* at 236–37. *See also Transcontinental Gas Pipe Line Corp.* v. *Federal Power Commission*, 518 F.2d 459, 465 (D.C. Cir. 1975).

The statistical sampling method used for the Commission's matching fund submission process was designed and recommended by Ernst and Whinney (now Ernst and Young), one of the world's largest accounting firms. The Commission believes that this method works equally well in evaluating excessive and illegal contributions. In addition, in 1979 the Commission's Audit Division wrote to Arthur Andersen & Company, asking whether it would be appropriate to use statistical sampling to determine both matching fund eligibility and nonqualified campaign expenses. They responded that this would be appropriate in both situations. The Commission soon afterwards began to use statistical sampling in making matching fund determinations, but has not yet done so to determine nonqualified campaign expenses. However, if statistical sampling can be used to extrapolate the amount of nonqualified campaign expenses, it would seem equally capable of extrapolating the number of excessive and illegal contributions.

One commenter who supported this approach requested that the Commission advise committees in advance what records will be reviewed on a full 100% basis. The Commission believes it is inappropriate to divulge this kind of information in advance. Also, this can vary from committee to committee.

In its letter endorsing the use of statistical sampling to determine the amount of nonqualified campaign expenses, Arthur Andersen & Company recommended ''that the resulting repayment determination [the repayment determination based on the sample] not be deemed as final until the committee being audited has been provided with the opportunity to

furnish additional support that might indicate that a modification of the sample results would be appropriate.'' The Commission follows this recommendation in projecting excessive and illegal contributions.

The Commission's projection of the total amount of excessive or prohibited contributions based on apparent excessive or prohibited contributions identified in a sample of a committee's contributions is only a preliminary finding. The Commission informs the committee which items served as the basis for the sample projection, and the committee responds to the specific sample items used to make the projection. If the committee shows that any errors found among the sample items were not excessive or prohibited contributions; were timely refunded, reattributed or redesignated; or for some other reason were not errors, a new projection is made, based on the reduced number of errors in the sample. A witness at the Commission's hearing on these rules endorsed the use of sampling in this context in part because of this opportunity to work with Commission auditors and obtain a lower projection if the committee provides additional information to reduce the number of errors found in the sample.

Disgorgement

The Commission is further clarifying at new paragraph 9007.1(f)(3) that the amount of any excessive or prohibited contributions that are not refunded, reattributed or redesignated in a timely manner shall be paid to the United States Treasury. Committees have 30 days from the date of receipt in which to refund prohibited contributions, and 60 days in which to obtain the reattribution, redesignation or refund of excessive contributions. 11 CFR 103.3(b)(1), (2) and (3). A committee's failure to take action on these contributions is a failure to cure contributions that are in violation of the FECA. The same is true of attempts to cure them outside of the specified time periods.

Courts have upheld the use of disgorgement in cases involving securities violations ''as a method of forcing a defendant to give up the amount by which he was unjustly enriched.'' *SEC* v. *Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987), citing *SEC* v. *Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 102 (2nd Cir. 1978). Requiring repayment to the Treasury for contributions that have been accepted in violation of 2 U.S.C. §§ 441a and 441b is consistent with this reasoning.

Disgorgement eliminates the need for the Commission to monitor a committee's refunds of excessive or prohibited contributions. In addition, it is easier for a committee to make one payment to the Treasury, as opposed to refunding multiple contributions. Finally, although the Commission has used disgorgement in instances where a 100% review is conducted, this is a practical approach in those situations where it is difficult to discern the original contributors, e.g., where a 100% review is not done.

Some commenters questioned the Commission's authority to require repayment to the Treasury because this is not specifically provided for in the public funding Acts. However, the equitable doctrine of disgorgement supports the payment to the Treasury under these circumstances. The purpose of statistical sampling would be defeated if a 100% review of contributions was required to determine which particular contributions must be refunded, reattributed or redesignated. On the other hand, allowing committees to refund only those excessive or illegal contributions uncovered in the sample could result in a committee's retention of substantial funds to which it was not legally entitled.

Disgorgement is also consistent with past Commission practice. *See* Matter Under Review (''MUR'') 1704, where, based upon preliminary estimates, Commission directed respondents to pay $350,000 to the United States Treasury for contributions that would have exceeded section 441a limits; Plaintiff's Motion to Effectuate Judgment, *FEC* v. *Populist Party*, No. 92–0674(HHG) (D.D.C. filed May 4, 1993).

Moreover, this proposed payment is analogous to, and consistent with, the requirement at 11 CFR 9038.6 that stale-dated checks (those to creditors or contributors that remain outstanding after the campaign is over) be paid to the Treasury. This issue arose after the 1984 election cycle, and the rule was promulgated as a means to codify the Commission practice of requiring disgorgement, which was implemented during that cycle. *See* 52 FR 20864, 20874 (June 3, 1987).

One commenter argued that the stale-dated check situation should be distinguished from that involving excessive and illegal contributions, because the former involves the return of public funds to the Treasury, while the latter involves private contributions. Once again, however, the same accounting principles apply to both situations.

Section 9007.2 Repayments

Further Streamlining the Audit Process

Section 9007.2 has been revised to reflect amendments made to section 9007.1. Revised paragraph (a)(2) states that the audit report provided to the candidate under 11 CFR 9007.1(d), which contains the Commission's repayment determination, will constitute notification for purposes of the three-year notification requirement of 26 U.S.C. 9007(c). This approach is consistent with two recent decisions by the United States Court of Appeals for the District of Columbia Circuit, *Dukakis* v. *Federal Election Commission*, No. 93–1219 (D.C. Cir. May 5, 1995) and *Simon* v. *Federal Election Commission*, No. 93–1252 (D.C. Cir. May 5, 1995).

Paragraph (a)(2) has also been revised to conform to the statutory requirement that the 26 U.S.C. 9007(c) notification period ends 3 years after the day of the presidential election.

Paragraph (a)(3) has been reworded to state that once the candidate receives notice of the Commission's repayment determination contained in the audit report, the candidate should give preference to the repayment over all other outstanding obligations of the committee, except for any federal taxes owed by the committee.

The Commission is moving former 11 CFR 9004.4(c) to new paragraph (a)(4). This paragraph, which deals with permissible sources of repayments, is more properly located in the section dealing with repayments.

New repayment determination procedures are set forth in revised paragraph (c). Revised paragraph (c)(1) largely follows the former language, but refers to the audit report as the source of the repayment determination. The last sentence of that paragraph has also been revised to clarify that the candidate shall repay to the United States Treasury the amount which the Commission has determined to be repayable, using procedures set forth in 11 CFR 9007.2(d).

Revised paragraph (c)(2) sets forth the procedures necessary for a committee to obtain an administrative review of the repayment determination. Please note that this review is limited to repayment issues. It does not cover other issues, such as disgorgement, that will if necessary be handled through the enforcement process.

Paragraph (c)(2)(i) corresponds to former 11 CFR 9007.2(c)(2) and addresses the submission of written materials as part of this process. Paragraph (c)(2)(ii) corresponds to former 11 CFR 9007.2(c)(3), discussing

the oral hearing. The language in these paragraphs for the most part follows the former rules, with the following additions. The deadline for filing written materials seeking an administrative review of the repayment determination has been lengthened from 30 to 60 days. Also, the candidate's failure to timely raise an issue in the written materials presented pursuant to paragraph (c)(2)(i) will be deemed a waiver of the candidate's right to raise the issue at any future stage of the proceedings. *See Robertson* v. *FEC,* 45 F.3d 486 (D.C. Cir. 1995). Further, under paragraph (c)(2)(ii), a candidate who desires an oral hearing must, at the same time he or she presents written materials pursuant to paragraph (c)(2)(i), request such a hearing in writing, and identify in that request the repayment issues the candidate wishes to address at the oral hearing.

Revised paragraph (c)(3) corresponds to former 11 CFR 9007.2(c)(4), and now deals with repayment determinations made after an administrative review. Please note that the statement regarding the Commission's possible consideration of new or additional information from other sources does not provide a means for the candidate or anyone acting on the candidate's behalf to make untimely submissions. Former 11 CFR 9007.2(c)(4) has been repealed.

Paragraphs (d), (f), (g) and (i) have been revised to conform with the new terminology used elsewhere in this section.

Gains On the Use of Public Funds

As indicated in the discussion of section 9004.5, above, the final rules contain a conforming amendment to the introductory language of section 9007.2(b)(4). This amendment clarifies that receiving income from investment or any other use of payments from the Fund is a basis for requiring payment to the Treasury. The Commission will require the committee to pay any such income received, less taxes paid, to the Treasury. The revisions to sections 9004.5 and 9007.2 ensure that any income received through the use of public funds benefits the public financing system. However, as indicated above, this provision does not apply to income that is exempt function income under 26 U.S.C. § 527(c)(3), such as amounts received from fundraising activities.

Interest

The Commission sought comment in the NPRM on whether interest should be assessed in certain situations. Although some commenters opposed this idea, the Commission believes it is appropriate to assess interest on late repayments, and is therefore amending 11 CFR 9007.2(d) to provide that interest will be assessed on repayments made after the initial 90-day repayment period established at 11 CFR 9007.2(d)(1) or after the 30-day repayment period established at 11 CFR 9007.2(d)(2).

In the absence of interest charges for late repayments, debtors have little or no incentive to make timely repayments. Without this requirement, debtors may be more likely to pay their private sector debts first, as these generally accrue interest, and their government debts last.

While the presidential fund Acts contain no language on interest assessment, federal common law holds that interest may be assessed on debts owed the government, even without a statutory provision granting that power. *Robinson* v. *Watts Detective Agency,* 685 F.2d 729, 741 (1st Cir. 1982), *cert. denied,* 459 U.S. 1204 (1983). In particular, a statute is not necessary to compel payment of interest where equitable principles allow this. *Young* v. *Godbe,* 82 U.S.. 562, 565 (1872).

The Commission has already established the precedent that it may assess interest when a presidential committee seeks a stay of a repayment determination pending appeal. 11 CFR 9007.5(c)(4), 9038.5(c)(4). One reason cited by the Commission for taking this action was to protect the Treasury ''by helping to ensure that the repayment challenge is a serious one and not a dilatory tactic.'' Agenda Document 86–118, Proposed Revision of Title 26 Regulations (Nov. 26, 1986). Another was that, if the candidate is earning interest on the disputed repayment amount, the Treasury and not the candidate should receive the benefit if the Commission's repayment determination is upheld. *Id.* Both reasons are equally applicable in this situation.

By agreeing to certain conditions, including an audit and appropriate repayment, the presidential committees have established a contractual relationship with the Commission under which interest assessment becomes appropriate. *See West Virginia* v. *United States,* 479 U.S. 305, 310 (1987). Also, if a debtor-creditor relationship is established, ''interest is allowed as a means of compensating a creditor for loss of use of his money.'' *United States* v. *United Drill and Tool Corporation,* 183 F.2d 998, 999 (D.C. Cir. 1950). Such a relationship exists in this context in that, prior to the receipt of public funds, the candidate must agree to repay unexpended funds, money determined to be spent in an unqualified manner, and amounts received in excess of entitlement. 11 CFR 9003.1(b)(6), 9033.1(b)(7).

The interest currently assessed under 11 CFR 9007.5(c)(4) and 9038.5(c)(4) is the greater of that calculated using the formula set forth at 28 U.S.C. § 1961 (a) and (b) for computing interest on money judgments in federal civil cases, or the amount actually earned on the funds set aside under those sections. The Commission believes it is appropriate to utilize a similar approach in this situation. The Commission is therefore adding new paragraph 9007.2(d)(3) to provide that a comparable formula shall be used in assessing interest on late repayments under section 9007.2.

Section 9007.3 Extensions of Time

The Commission is amending paragraph (c) to include in that paragraph the policy that, whenever 11 CFR Part 9007 establishes a 60-day response period, the Commission may grant no more than one extension of time, which extension shall not exceed 15 days. The rules formerly provided for a 30 day response period. Materials provided to the committees prior to the audit process explained that extensions of time were limited to a single, 45 day extension. The rules thus continue the former 75-day total response period, and the initial 60-day response period may result in fewer extension of time requests.

Section 9007.5 Petitions for Rehearings; Stays of Repayment Determinations

The Commission is making conforming amendments to paragraphs (a), (b), (c)(1)(ii) and (c)(4), to reflect changes in terminology for the audit and repayment process. *See* discussion of 11 CFR 9007.1 and 9007.2, above.

Section 9007.7 Administrative Record

New section 9007.7 explains which documents constitute the administrative record for purposes of judicial review of final determinations regarding candidate certification and eligibility, and repayment determinations. The NPRM had included a lengthy list of documents that usually form the basis of the administrative record. It also indicated that certain items are not part of the Commission's decisionmaking process, and thus not part of the record on review.

One commenter expressed concern that the Commission was trying to impermissibly restrict documents to be included in the administrative record. The comment noted that judicial review is based on the whole record before the

agency. Similarly, another commenter stated that the administrative record should include all materials that form the basis of the Commission's decisions. Two comments suggested including workpapers on which the auditors relied in making their calculations and recommendations. During the course of the audit and repayment processes, it has been the Commission's practice to provide committees with the audit work papers they need to formulate their responses.

The Commission agrees that the administrative record includes all materials it considered in making its decision, and the final rules have been modified to reflect this. Thus, it will generally include all documents circulated to the Commission (including attachments) and materials referenced in those documents. However, documents in the files of individual Commissioners, or documents in FEC employees' files which do not constitute a basis for the Commission's decisions, are not included in the record. The administrative record also does not include transcripts or tapes of Commission discussions of audit or repayment matters. *See, Common Cause* v. *Federal Election Commission*, 676 F. Supp. 286, 289 and n.3 (D.D.C. 1986). Although these materials may sometimes be made available under the Freedom of Information and Government in the Sunshine Acts, they do not provide an adequate explanation of the reasons for the Commission's decisions because they represent pre-decisional discussions. Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product, are also excluded from the administrative record.

The new rules indicate that documents and materials timely submitted by publicly-funded committees for Commission consideration are a part of the administrative record. Materials will also be considered timely submitted if they are received within an extension of time granted by the Commission. It is important that committees avail themselves of the opportunity to submit documents and other materials in a timely fashion, as they will be deemed to have admitted all specific findings and conclusions contained in an audit report or a repayment determination unless they specifically contest those findings and conclusions and provide supporting evidence and legal arguments at the appropriate time. When submitting evidentiary materials, committees should keep in mind that statements of counsel that are not supported by personal knowledge do not constitute evidence. Committees may include in their submissions the audit work papers with which they have been provided. They need not include transcripts or tapes of their oral presentation to the Commission regarding repayment determinations, as those materials are already a part of the record.

Section 9008.12 Repayments

A conforming amendment has been added to paragraph (a)(2), to state that the audit report provided to the convention committee that contains the Commission's repayment determination will constitute notification for purposes of the three-year notification requirement of 26 U.S.C. 9008(h).

The Commission's rules governing public financing of national nominating conventions provide at 11 CFR 9008.11 that audits of convention committees follow the procedures for audits of presidential campaign committees set forth at 11 CFR 9007.1 and 9038.1. The former language contained a reference to the IAR, which is no longer a part of these procedures.

Part 9032—Definitions

Section 9032.9 Qualified Campaign Expenses

The Commission is adding a conforming amendment to paragraph (c) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. The amendment notes that certain expenditures formerly covered by this paragraph will not be attributed under these new guidelines. See discussion of 11 CFR 9034.4(e), below.

Part 9033—Eligibility for Payments

Section 9033.1 Candidate and Committee Agreements

In the interests of clarity, the Commission is adding a comma in the second sentence of 11 CFR 9033.1(b)(5). Paragraph (b)(5) concerns candidate and committee agreements to furnish certain documentation to the Commission.

A conforming amendment has been added to paragraph 9033.1(b)(7), clarifying that the same candidate and committee responsibilities that attach to an audit and examination made pursuant to 11 CFR part 9038 also attach to part 9039 investigations, under appropriate circumstances. See discussion of part 9039, below.

The final rules slightly reword paragraph (b)(11) of this section to more clearly indicate that candidates must agree to pay any civil penalties arising from violations of the FECA, whether provided for in a conciliation agreement or imposed in a judicial proceeding.

New paragraph 9033.1(b)(12) has been added to require presidential primary candidates to include closed captioning in the preparation of their television commercials, as a precondition of their receiving public funds. This amendment corresponds to new paragraph 9003.1(b)(10), discussed above. The Legislative Branch Appropriations Act of 1992 does not specifically amend 26 U.S.C. § 9033, which sets out the eligibility requirements for presidential primary candidates. However, the Appropriations Act does state that the closed captioning requirement inserted in 26 U.S.C. § 9003(e) applies both to general election candidates and to candidates who are eligible for funding ''under chapter 96'' of Title 26 of the United States Code, that is, the Matching Payment Act. The Commission is therefore amending 11 CFR 9033.1(b) to reflect this new requirement.

Section 9033.4 Matching Payment Eligibility Threshold Requirements

Former 11 CFR 9033.4(b) stated that, in evaluating a candidate's matching fund submission, the Commission could consider other relevant information in its possession, including but not limited to past actions of the candidate in an earlier campaign. This provision was held to exceed the Commission's statutory authority in *LaRouche v. FEC*, 996 F.2d 1263 (D.C. Cir. 1993), *cert. denied* 114 S. Ct. 550. The Commission is therefore deleting this paragraph from the rule.

Section 9033.11 Documentation of Disbursements

Revised section 9033.11 follows revised section 9003.5.

Part 9034—Entitlements

Section 9034.4 Use of Contributions and Matching Payments

Winding Down Costs

The regulations at 11 CFR 9034.4(a)(3)(i) permit candidates to receive contributions and matching funds, and make disbursements, for the purpose of defraying winding down costs over an extended period after the candidate's date of ineligibility (''DOI''). These amounts are treated as qualified campaign expenses, and can result in additional audit fieldwork and preparation of addenda to audit reports to focus on these receipts and disbursements.

As part of an effort to streamline and shorten the audit process, the

Commission sought comment on ways to reduce the winding down time for campaigns. The NPRM suggested limiting the amount that a candidate may receive for winding down costs to no more than a specified dollar amount, or a fixed percentage of the candidate's total expenditures during the campaign, or a fixed percentage of total matching funds certified for the candidate. The NPRM questioned whether campaigns that receive a pre-established dollar amount, but do not use the entire amount for winding down costs, should be permitted to retain the unspent amount. Alternatively, comments were sought on establishing a cutoff date after which winding down expenses would no longer be considered qualified campaign expenses.

Several commenters and witnesses opposed limiting wind down costs. They felt that basic fairness requires campaigns to have the resources necessary to respond during the audit process and to defend themselves against enforcement proceedings. It was also pointed out that during this period, campaigns need to be able to verify the proper payment of remaining bills, and that it would be a waste of federal funds if they were hampered in identifying incorrect bills.

The Commission agrees that it would be quite difficult to select an amount or time frame sufficient to meet reasonable expenses incurred in winding down the campaign. A limit on the amount of public funds available for winding down would provide the same difficulties as a restriction on the total funds to be used for wind down. Consequently, the final rules contain no new restrictions on the amount spent on winding down or the time taken. Thus, the Commission will continue to review the committee's wind down costs on a case by case basis.

Post-DOI Expenses as Exempt Compliance Expenses

New language in section 9034.4(a) incorporates the current practice of permitting publicly-funded primary committees to treat 100% of salary, overhead and computer expenses incurred after the candidate's DOI as exempt compliance expenses, beginning with the first full reporting period after DOI. *See, Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing,* p. 25 (January 1992). Two witnesses and one commenter urged adoption of this provision. Please note that this regulation does not apply to expenses incurred during the period between DOI and the date on which a candidate either re-establishes eligibility or ceases to continue to campaign.

Gifts and Bonuses

New language in section 9034.4(a) and section 9004.4(a) permits campaign committees to use federal funds to defray the costs of gifts for committee staff, volunteers and consultants, as long as the gifts do not exceed $150 per individual and as long as all gifts do not exceed $20,000. This approach received a favorable response from one witness and one commenter. It is somewhat similar to a provision included in the public funding rules for convention committees at 11 CFR 9008.7(a)(4)(xii). See 59 FR 33618 (June 29, 1994).

With regard to bonus arrangements provided for in advance in a written contract, the NPRM sought comments on whether the amount of these bonuses should be restricted to a fixed percentage of the compensation paid as provided by the contract, or whether these bonuses should be subject to the overall $20,000 limit. A number of commenters and witnesses opposed these suggestions on the grounds that bonus decisions should remain within the discretion of the committees; primary campaigns may not know at the outset how much will be available for bonuses; and campaigns may choose not to enter into written employment contracts. Some felt these proposals were more feasible for general election committees than for primary campaigns because the party nominees know at the outset what their funding level will be for the general election. It was also suggested that all bonuses be paid within ten days of a committee's date of ineligibility.

The final rules have been revised to require that for general election campaigns, bonus arrangements must be provided for prior to the date of the general election in a written contract, and must be paid during the expenditure report period, which ends thirty days after the general election. Similarly, primary campaigns must make bonus arrangements in advance and must pay bonuses no later than thirty days after the candidate's DOI. These time frames allow ample time for campaigns to make decisions regarding bonuses.

Lost or Damaged Equipment

The Commission is adding new paragraph (b)(8) to section 9034.4 to clarify that the cost of lost or damaged items may be considered a nonqualified expense for purposes of these rules. This change parallels new paragraph 9004.4(b)(8), and is discussed in more detail in connection with section 9004.4, above.

Funding General Election Expenses With Primary Funds

The Presidential Election Campaign Fund Act, the Presidential Primary Matching Payment Account Act, and Commission regulations require that publicly funded presidential candidates use primary election funds only for expenses incurred in connection with primary elections, and that they use general election funds only for general election expenses. 26 U.S.C. 9002(11), 9032(9); 11 CFR 9002.11, 9032.9. These requirements are tied to the overall primary and general election expenditure limits set forth at 2 U.S.C. 441a (b) and (c), and at 26 U.S.C. 9035(a). *See also* 11 CFR 110.8(a), 9035.1(a)(1).

Questions have arisen in recent election cycles as to whether certain expenses charged to primary committees were in fact used to benefit the general election. Once a candidate has secured enough delegates to win the nomination, the focus of the campaign may turn in large part to the general election. However, it can be difficult to distinguish between primary campaign activity, such as that designed to lock up delegates or otherwise related to the outcome of the primary campaign, and convention preparation, from activity that is geared towards winning the general election.

The NPRM sought general suggestions on how best to address this situation. For example, it suggested that certain expenditures within a set time frame before the date of the candidate's nomination might be subject to higher scrutiny. In addition, the Notice contained specific proposals on how to treat capital assets, certain goods and services, and supplies and materials in this context; and sought comments on how other expenditures, such as those for campaign related travel and media expenses, should be attributed.

Most of the commenters who addressed this issue favored a ''bright line'' cut-off date between primary and general election expenses, which would give committees clear guidance as to which expenses will be attributed to the primary election and which to the general election. Some suggested that this date be set as the candidate's date of ineligibility. Moreover, most comments opposed any guidelines or presumptions that would require a ''case-by-case'' determination of how certain expenditures should be characterized.

The Commission recognizes that it can be difficult to select a single ''bright

line'' date appropriate for all campaigns under all circumstances. Also, the adoption of ''bright line'' rules could in certain instances result in the primary committee's subsidizing the general election committee, or vice versa. Nevertheless, the Commission believes this approach is appropriate with regard to certain specific types of expenditures that may benefit both the primary and the general election. These include expenditures for polling; state or national offices; campaign materials; media production costs; campaign communications; and campaign-related travel costs (*see also* 11 CFR 9034.5, depreciation of capital assets, discussed below).

The Commission recognizes that there could be situations in which this approach does not accurately reflect the relative impact of particular expenditures. However, these differences should balance themselves out over the course of a lengthy campaign. In addition, a major factor in the Commission's decision is the desire to complete the audits more quickly and using fewer agency resources. It can be extremely time- and labor-intensive for both the Commission and the committees to examine thousands of individual expenditures, especially where, as here, both the timing and the purpose of each expenditure is at issue. Accordingly, the Commission is adding a new paragraph (e) to this section partially deal with this situation.

The introductory language to this paragraph notes that these rules apply only to campaigns of candidates who receive public funding in both the primary and the general election. Paragraph (e)(1) states the general rule that any expenditure for goods or services that are used exclusively for either the primary or the general election campaign shall be attributed to the limits applicable to that election.

Please note that primary expenditures are also attributable to the state allocation limits set forth in 11 CFR 106.2. Also, any expenditures that are attributed to the general election limits shall be paid for with general election funds.

Paragraph (e)(2) states that polling expenses shall be attributed according to when the results of the poll are received. If the results are received on or before the date of the candidate's nomination, the expenses will be considered primary election expenses. If partial results are received both before and after the date of the candidate's nomination, the costs shall be allocated between the primary and the general election limits based on the percentage of results received during each such period.

A conforming amendment is also being made to 11 CFR 9003.4(a) (see discussion above). That paragraph formerly stated that certain polling expenses could count against the general election limit regardless of when the results of the polling were received.

Paragraph (e)(3) addresses overhead expenditures and payroll costs incurred in connection with state or national campaign offices, and attributes these according to when usage of the office occurs. For usage on or before the date of the candidate's nomination, these expenses are attributed to the primary election, except for periods when the office is used only by persons working exclusively on general election campaign preparations. The definition of ''overhead expenditures'' set forth in 11 CFR 106.2(b)(2)(iii)(D) is incorporated by reference into this paragraph.

Paragraph (e)(4) addresses campaign materials, including bumper stickers, campaign brochures, buttons, pens and similar items, that are purchased by the primary campaign and later transferred to the general election campaign. Any such materials that are used in the general election shall be attributed to the general election limits. Materials transferred to the general election committee but not used in the general election shall be attributed to the primary election limits.

Paragraph (e)(5) states that 50% of production costs for media communications that are broadcast or published both before and after the date of the candidate's nomination shall be attributed to the primary election limits, and 50% to the general election limits. Please note that distribution costs, including such costs as air time and advertising space in newspapers, must be paid for 100% by the primary or general election campaign depending on when the communication is broadcast or distributed.

The Commission notes that the pre- and post-nomination communications need not be identical for this attribution ratio to apply. Obvious changes include such matters as stating that the communication was ''paid for by '' the candidate's general rather than primary election campaign committee; and references to the candidate as the party's actual, rather than potential, nominee. However, there are also situations where a communication is substantially unchanged, except for a portion targeted to, for example, specific constituent groups or different parts of the country. The Commission also intends to apply the 50/50 attribution ratio to these communications.

Paragraph (e)(6) addresses campaign communications, including solicitations, that are not used in both the primary and the general election. In the past questions have arisen as to whether a per-DOI communication was intended to influence the general election, or vice versa (e.g., thank you letters for primary contributions sent after the date of the candidate's nomination).

Paragraph (e)(6)(i) states that the costs of a solicitation shall be attributed to the primary election or to the General Election Legal and Accounting Compliance Fund, depending on for which purpose the solicitation is made.

While candidates may not accept private contributions to cover expenses incurred to benefit the general election campaign, they may solicit contributions for the GELAC. The rule states that, if a candidate solicits funds for both the primary election and for the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC. Consequently, the primary committee must pay 50% of the solicitation costs, and the GELAC must pay 50%.

Occasionally a committee will solicit contributions to retire a primary election debt, and receive more money in response to the solicitation than is needed to pay off the debt. Under 11 CFR 9003.3(a)(1)(iv)(C), the committee may transfer such excess contributions to the GELAC if proper redesignations are obtained. If a committee chooses to seek redesignations, the cost of the solicitation shall be attributed to the primary limits, while any redesignation costs shall be paid by the GELAC.

Paragraph (e)(6)(ii) states that the costs of a communication that does not include a solicitation shall be attributed to the primary or general election limits based on the date on which the communication is broadcast, published or mailed.

Paragraph (e)(7) states that expenditures for campaign-related transportation, food and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense, except that the costs of travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if the travel occurs before the candidate's nomination. Travel both to

and from the convention shall be a primary expense.

Sources of Repayment

The rule set out in current paragraph 9034.4(c) has been moved to new paragraph 9038.2(a)(4). Paragraph 9034.4(c) has been removed and reserved for future use. This change generally follows the conforming amendment discussed in connection with section 9004.4, above.

Section 9034.5 Net Outstanding Campaign Obligations

NOCO Statements

The final rules make a number of changes in the requirements for submission of NOCO statements set out in section 9034.5. Paragraph (b) is amended to require committees submitting NOCO statements to include a breakdown of the estimated winding down costs listed on the statement by category and time period. The committee must provide estimates of quarterly or monthly expenses from the date of the NOCO statement until the expected termination of the committee's political activity. These estimates must be broken down into amounts for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing, and storage.

One commenter noted that it can be difficult to estimate winding down costs until well into the audit process, because the committee continues to receive bills, and also because it is not clear what issues will arise until the audit is underway.

The Commission recognizes that the winding down figures on a committee's NOCO statements are, by necessity, estimates of anticipated expenses. However the Commission has decided to require a breakdown of these expenses in order to obtain more meaningful information than is obtained under the existing rule. Currently, many NOCO statements list the candidate's estimated necessary winding down costs as a single lump sum. Requiring the breakdown will help the Commission determine whether the candidate is entitled to receive the entire estimated amount.

The final rules also revise the schedule for submission of revised NOCO statements. Under the current rules, candidates are required to submit a revised NOCO statement with each matching payment request submitted after DOI. The proposed rules would have required candidates to submit an additional revised NOCO statement just before the date when matching fund payments will be certified, on a date to be published by the Commission. The additional statement would be used to ensure that the amount of matching funds certified accurately reflects the committee's financial situation at the time of certification. One commenter thought this additional requirement would be burdensome and will not solve the problem identified in the NPRM.

The Commission believes that requiring two revised NOCO statements for each matching payment submission is unnecessary. Consequently, the final rules change the Commission's current policy of requiring candidates to submit a revised NOCO statement at the time of each post-DOI matching payment submission. Instead, the final rules require the candidate to submit a certification that his or her remaining net outstanding campaign obligations equal to or exceed the amount submitted for matching. If the candidate so certifies, the Commission will process the matching payment submission.

The candidate must then submit a revised NOCO statement just before the next regularly scheduled payment date, on a date to be determined and published by the Commission in the **Federal Register**. The statement must reflect the financial status of the campaign as of the close of business three business days before the due date, and must also contain a brief explanation of each change in the committee's assets and obligations from the most recent NOCO statement. This will allow the Commission to adjust the committee's certification to reflect any change in the committee's financial position that occurs after submission of the initial matching payment request. Thus, the amount certified will be closer to the committee's actual entitlement, reducing the need to seek subsequent repayment.

This revised schedule is set out in paragraphs 9034.5(f) (1) and (2) of the final rules. Paragraph 9034.5(f)(2) of the former rules has been renumbered as paragraph (f)(3), without revision.

The Commission notes that, while the additional information required should increase the accuracy of the matching fund certifications, as under the current practice, the Commission will not approve NOCO statements when they are submitted. Thus, although the new rules will often reduce the size of a committee's repayment, the Commission will continue to seek repayment under appropriate circumstances.

Capital Assets

The Commission is amending paragraph (c)(1) of this section to provide for a standard 40% depreciation of capital assets that are received by a primary campaign committee prior to the candidate's DOI and subsequently sold to the general campaign committee or to another entity.

The former rule set forth the 40% depreciation allowance, but allowed a higher depreciation for particular item if the committee demonstrated through documentation that the asset's fair market value was lower. However, there was no corresponding provision for the Commission to document a higher fair market value. The NPRM proposed that the 40% figure be subject to both increase and decrease, under appropriate circumstances. Most of those who commented on this issue opposed this change, which the Commission had proposed to more accurately reflect its experience in dealing with this situation.

Consistent with its approach to other expenditures that can be attributed to both the primary and the general election limits (see discussion of 11 CFR 9034.4(e), above), the Commission is adopting a ''bright line'' 40% depreciation figure for capital assets that are used in both the primary and the general election campaigns. While the Commission recognizes that there may be instances in which the 40% figure is too low, there are also situations in which that figure may be too high. The Commission believes that in many instances there differences will balance themselves out over the course of a lengthy campaign. Also, given the number of capital assets involved in a typical campaign, it can be time- and labor-intensive for both the Commission and the committee to handle these on a case-by-case basis.

Please note that the term ''capital asset'' includes components of a system used as a whole and purchased at the same time at a cost exceeding $2000, even if individual system components cost less than $2000.

Section 9034.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

Section 9034.6 has been reorganized with minor substantive changes. These revisions are the same as those made to section 9004.6, the parallel provision for general election committees. *See* the discussion of section 9004.6, above.

Section 9034.7 Allocation of Travel Expenditures

The changes in section 9034.7 follow the changes to section 9004.7

Part 9036—Review of Submission and Certification of Payments by Commission

Section 9036.2 Additional Submissions for Matching Fund Payments

Complete Contributor Identification

Treasurers of political committees, including authorized committees of presidential candidates, are required by 2 U.S.C. §§ 432(i) and 434(b) to use their best efforts to obtain, maintain and report the name, address, occupation and employer of all contributors who give over $200 per calendar year. The Commission recently issued revised rules regarding this reporting obligation. *See* 58 FR 57725 (Oct. 27, 1993). During that rulemaking, two commenters suggested revising 11 CFR 9036.2 so that presidential primary candidates would only receive matching funds for contributions exceeding $200 that also contain complete contributor information. While full contributor identifications are required for such contributions in threshold submissions under 11 CFR 9036.1(b), they have not been required under 11 CFR 9036.2(b)(1)(v) for additional submissions for matching funds. Accordingly, the Commission sought comment on whether to delete section 9036.2(b)(1)(v), thereby requiring complete contributor information for all matchable contributions exceeding $200. In the alternative, comments were sought on only matching these contributions if committees can provide evidence demonstrating they made their best efforts to obtain the information.

There was no consensus among the commenters and witnesses who addressed this issue. Some felt that the public has a right to complete disclosure of this information when its money is given to presidential candidates, and that there is no rational basis for the distinction between threshold submissions and subsequent requests for matching funds. They cited figures from the 1992 election cycle to argue that some candidates did not take the disclosure statutes seriously. Others pointed out that the new best efforts rules are intended to resolve this issue, and that it would be onerous for committees to show during the matching submission process that they have satisfied the new best efforts rules. Some felt that contributors should not be forced to forego their privacy rights in order to have their contributions matched. Hence, they argued that vigorous enforcement of the new best efforts rules is the appropriate course of action.

For several reasons, the Commission has decided not to change the current requirements regarding matchability of contributions from individuals. First, the Commission has seen a significant increase in the reporting of occupation and employer since the best efforts regulations were revised. For example, a comparison of authorized committee reports for April–September 1992 with reports for April–September 1994, shows the number of itemizable contributions from individuals which lacked information on the contributor's principal place of business decreased from 17% to 10%. Thus, it is premature to conclude that further measures are needed to enhance disclosure. Secondly, it is not a efficient use of Commission resources to verify this information during the matching fund submission process. Doing so would slow down an already time-constrained process. Moreover, the reasons for requiring occupation and employer in threshold submissions do not apply to additional submissions. Occupation and employer information are necessary for threshold submissions to ensure that candidates have met the eligibility requirements by having received matchable contributions of at least $5000 from contributors in at least 20 states.

Use of Digital Imaging for Matching Fund Submissions

Several questions were also raised regarding the possibility that committees may wish to submit contributions for matching through the use of digital imaging technology such as computer CD ROMs, instead of submitting paper photocopies of checks and deposit slips. One witness urged the Commission to allow committees to have this option. Accordingly, new language has been added to paragraph (a)(1)(vi) of section 9036.2 to let committees provide digital images of contributions, but not to require that they do so. If they choose this option, the Commission may require committees to supply the Commission with the equipment needed to read the digital data at no cost to the Commission. One witness stated that this was a reasonable condition. Given the variety of sources providing this technology, it is not feasible for the Commission to purchase all the equipment that different committees might wish to use. The new language also specifies that the digital information committees provide must include an image of each contribution received and imaged during the period covered by the matching fund submission, not just matchable contributions. As a practical matter, it may be simpler for committees to include all contributions on CD ROMs rather than separating out the nonmatchable ones. This approach will have the additional benefit of enabling the Commission's audit staff to begin examining contributions at an earlier point, which should speed up the audit process. The Commission may seek verification from the committee's bank or from contributors pursuant to 11 CFR 9039 if the Commission is unable to resolve questions regarding the digital images submitted.

While the Commission is approving the submission of contribution information using computerized digital imaging technology, it is not changing the requirements regarding the submission of disbursements documentation. Previously, the Commission has concluded that the retention of microfilm records satisfies the documentation requirements of 2 U.S.C. § 432(c), and that for electronic transfers, committees may keep records in the form of computerized magnetic media. AOs 1994–40 and 1993–4. However, these advisory opinions addressed fairly limited record retention issues, and did not address or resolve issues regarding the use of digital imaging technology to satisfy the requirements of 11 CFR 9003.5 or 9033.11.

Section 9036.5 Determination of Ineligibility Date

A conforming amendment has been added to paragraph 9036.5(a), clarifying that the procedures of section 9036.5 apply to matching fund resubmissions made pursuant to 11 CFR part 9036 and those prompted by an inquiry under 11 CFR part 9039, under appropriate circumstances. See discussion below.

Part 9037—Payments and Reporting

Section 9037.4 Alphabetized Schedules

The final rules include new section 9037.4, which follows new section 9006.3.

Part 9038—Examination and Audits

Section 9038.1 Audit

The amendments to this section follow those made to section 9007.1, above.

Section 9038.2 Repayments

Repayment Ratio

Section 9038.2(b)(2) of the current rules requires candidates to repay amounts received from the matching payment account that are used for non-qualified campaign expenses. The amount of the repayment is determined by multiplying the total amount of non-qualified campaign expenses by the candidate's repayment ratio. The repayment ratio is the ratio of matching funds received by a candidate to the candidate's total deposits. Under the current rules, the repayment ratio is determined as of the candidate's date of ineligibility.

The new rule changes the date for determining a candidate's repayment ratio from the date of ineligibility to 90 days after the date of ineligibility. Under the new rule, the Commission will multiply the amount of non-qualified campaign expenses by the ratio of matching funds to total deposits received as of 90 days after the candidate's date of ineligibility, in order to determine the amount the candidate must repay for using matching funds for non-qualified campaign expenses.

The new rule generates a repayment ratio that more accurately reflects the mix of public funds and private contributions received during the campaign, particularly for a candidate who receives significant amounts of private contributions after his or her date of ineligibility. By taking private contributions received within 90 days of DOI into account when determining a candidate's repayment ratio, the new rule will likely reduce the radio, thereby reducing the amount of the candidate's repayment.

This approach is also more consistent with the statute when applied to a candidate who does not receive matching payments until after his or her date of ineligibility. Section 9038(b)(2) of the Matching Payment Act requires a candidate who uses public funds for non-qualified campaign expenses to repay a portion of the public funds he or she received to the Treasury. However, when section 8038.2(b)(2) of the current regulations is applied to a candidate who does not receive matching payments until after his or her DOI, it arguably generates a repayment ratio of zero. Thus, it does not require the candidate to make a repayment, even if the candidate incurred numerous non-qualified campaign expenses.

The new rule takes these post-DOI matching payments into account, thereby generating a ratio that is greater than zero and more accurately reflects the mix is greater than zero and more accurately reflects the mix of matching payments and private contributions actually received. As a result, publicly-funded candidates that incur non-qualified campaign expenses will be required to make a repayment, even if they do not receive any public funds until after their date of ineligibility.

In approving this approach for the final rules, the Commission rejected an alternative approach set out in the NPRM. The alternative approach would treat all matching funds certified in response to matching payment submissions received before the candidate's DOI as if they were certified before the candidate's DOI. This would result in a repayment ratio of greater than zero that could be used to determine a repayment amount under section 9038(b)(2) of the statute. However, this approach would only address the zero repayment situation outlined above. Since determining the repayment ratio 90 days after DOI addresses both situations, the Commission has incorporated this approach into the final rules.

In an effort to improve clarity, the final rules break the last three sentences of this section into two separate paragraphs. The Commission received no comments on this provision.

Income Derived From the Use of Surplus Public Funds

Paragraph 9038.2(b)(4) has been revised to indicate that the Commission may determine that income resulting from any use of surplus public funds after the candidate's DOI, less taxes, paid, shall be paid to the Treasury. This change parallels the changes made to sections 9004.5 and 9007.2(b)(4), discussed above.

Further Streamlining the Audit Process

The amendments to the audit process contained in this section follow those made to section 9007.2(d), above.

Conforming Amendments

A conforming amendment has been added to paragraph 9038.2(c)(1), to clarify that the repayment procedures followed by the Commission in connection with an 11 CFR part 9038 examination or audit also apply to an 11 CFR part 9039 examination or audit. See discussion of Part 9039, below.

The amendments to paragraph (d) of this section are identical to those made to 11 CFR 9007.2, discussed above.

Section 9038.4 Extensions of Time

The amendment to this section follows that made to section 9007.3, above.

Section 9038.5 Petitions for Rehearing; Stays of Repayment Determinations

The amendments to this section follow those made to section 9007.5, above.

Section 9038.7 Administrative Record

This section generally follows new section 9007.7.

Part 9039—Review and Investigation Authority

Section 9039.3 Examinations and Audits; Investigations

The Commission's review and investigatory authority for administering the matching fund program is set forth at 26 U.S.C. § 9039(b). In carrying out these responsibilities, the Commission must perform a continuing review of candidate and committee reports and submissions, and other relevant information. Regulations implementing these requirements are found at 11 CFR part 9039.

For the most part the Commission's review is routine, carried out in accordance with the eligibility, audit and repayment procedures contained elsewhere in the regulations. Section 9039(b) and its implementing regulations provide authority to conduct audits and investigations in situations other than those addressed by 26 U.S.C. § 9038, 11 CFR part 9038, 2 U.S.C. § 437g and 11 CFR part 111. To date, most of these situations have involved issues relating to a candidate's continuing eligibility or the amount of his or her entitlement during the course of the campaign, although they can also involve a post-election inquiry.

Section 9039.3 of the regulations describes how examinations, audits and investments are conducted in these inquiries. However, the prior section did not address the actions that may be taken at the conclusion of any such action. The Commission is therefore adopting new paragraph 9039.3(b)(4) for that purpose.

This new paragraph states that, if the Commission decides to take no further action in a part 9039 case, the candidates(s) and committee(s) involved will be so notified. If the Commission decides to take further action, such action will follow as closely as possible the procedures already in place for comparable situations. Specifically, if the inquiry results in an adjustments to the amount of certified matching funds, the procedures set forth at 11 CFR 9036.5 shall be followed. If the inquiry coincides with an audit undertaken pursuant to 11 CFR 9038.1, the information obtained in the inquiry will be utilized as part of the repayment

determination. If the inquiry results in an initial or additional repayment determination, whether or not this coincides with a Commission audit, the procedures set forth at 11 CFR 9038.2, 9038.4 and 9038.5 shall be followed.

The new rules also include conforming amendments to 11 CFR 9033.1(b)(7), 9036.5(a), and 9038.2(c)(1).

Additional Issues

The Commission considered other proposals in the course of this rulemaking that it did not ultimately incorporate into the final rules. A summary of these proposals follows.

Convention Expenses of Ineligible Candidates

The Commission also sought comments in the NPRM on whether expenses incurred by losing primary election candidates in attending their party's national nominating convention should be considered a qualified campaign expense under 11 CFR 9032.9. Such attendance can provide a defeated candidate the opportunity to continue to fundraise and to maintain contact with his or her pledged convention delegates.

The Commission has decided for several reasons not to take this action. Qualified campaign expenses are defined in the Matching Payment Act at 26 U.S.C. § 9032(9)(A) as those ''incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election.'' This definition seemingly does not apply to those no longer seeking the presidential nomination.

Also, the purpose of the 10% rule set forth at 11 CFR 9033.5(b), under which a candidate becomes ineligible for additional funding on the 30th day following the date of the second consecutive primary election in which he or she receives less than 10% of the popular vote, is to discontinue funding of candidates who have not received substantial support following their initial establishment of eligibility. Allowing them to obtain additional funding at a later point in the process would undercut this purpose.

Under 11 CFR 9034.1(b), candidates can already count fundraising expenses incurred following their DOI, including those incurred at a national nominating convention, as qualified campaign expenses as part of their winding down costs. The Commission notes, however, that only those expenses directly related to fundraising qualify as qualified campaign expenses under this section. Creating an additional window of eligibility during the wind down period could substantially lengthen and complicate the audit process.

Treating Matching Payments as an Entitlement

One commenter urged the Commission to treat the matching payment program as more of an entitlement program. This commenter argued that the entitlement of a candidate who remains eligible for matching payments until the nominating convention should not be limited by the candidate's net outstanding campaign obligations. Instead, such a candidate should be entitled to receive matching funds for all matchable contributions received, up to fifty percent of the expenditure limitation. *See* 26 U.S.C. § 9034(b), 11 CFR 9034.1(d). The commenter said that the Commission should match all qualifying contributions submitted by such a candidate for matching, up to fifty percent of the limitation, and then seek a ratio surplus repayment once all campaign obligations have been satisfied.

However, this approach is inconsistent with the Matching Payment Act. Although the Act limits a candidate's overall entitlement to fifty percent of the expenditure limitation, the Act also further limits entitlement for candidates who become ineligible. Ineligible candidates are limited to matching payments for their net outstanding campaign obligations. 26 U.S.C. § 9033(c)(2). *See* 11 CFR 9034.1(b). All candidates for the nomination become ineligible when the party makes its nomination, because they can no longer be ''seeking'' a nomination that has already been awarded. *See* 26 U.S.C. § 9033(b)(2). Thus, a candidate's post-convention entitlement is limited to his or her NOCO, even if the candidate was eligible at the time the convention began.

If the commenter's suggestion were adopted, a candidate who was still eligible at the time of the convention could submit a large matching payment request after the nomination was awarded and have that request fully matched, even if the campaign had no debts outstanding at the time the funds were certified. The funds received would be treated as surplus funds rather than funds received in excess of entitlement. Thus, the committee would only be required to repay a portion of the funds under the surplus repayment rules. Such a result would frustrate the purposes of the Matching Payment Act, which requires a full repayment of any funds received by a candidate who has no further entitlement on the date of certification. 26 U.S.C. § 9038(b)(1). *See* 11 CFR 9038.2(b)(1).

The Commission also notes that this issue is the subject of ongoing litigation.

Certification of No Effect Pursuant to 5 U.S.C. § 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities will be affected by these final rules. Further, any small entities affected are already required to comply with the requirements of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act in these areas.

List of Subjects

11 CFR Part 106

Campaign funds, Political candidate, Political committee and parties, Reporting and recordkeeping requirements.

11 CFR Parts 9002–9004

Campaign funds, Elections, Political candidates.

11 CFR Parts 9006–9007

Administrative practice and procedure, Campaign funds, Elections, Political candidates, Reporting requirements.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Parts 9032–9034

Campaign funds, Elections, Political candidate.

11 CFR Parts 9036–9039

Administrative practice and procedure, Campaign funds, Political candidates.

For the reasons set out in the preamble, subchapters A, E and F of chapter I of title 11 of the Code of Federal Regulations are amended as follows:

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

1. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

2. Section 106.2 is amended by adding a sentence to the end of paragraph (a)(1), to read as follows:

§ 106.2 State allocation of expenditures incurred by authorized committees of presidential primary candidates receiving matching funds.

(a) * * *

(1) * * * Expenditures required to be allocated to the primary election under 11 CFR 9034.4(e) shall also be allocated to particular states in accordance with this section.

* * * * *

PART 9002—DEFINITIONS

3. The authority citation for part 9002 continues to read as follows:

Authority: 26 U.S.C. 9002 and 9009(b).

4. Paragraph (c) of § 9002.11 is amended by revising the first sentence to read as follows:

§ 9002.11 Qualified campaign expense.

* * * * *

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). * * *

PART 9003—ELIGIBILITY FOR PAYMENTS

5. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

6. In § 9003.1, the introductory text of paragraph (b) is republished, paragraphs (b)(4) and (b)(9) are revised, and new paragraph (b)(10) is added, to read as follows:

§ 9003.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidates shall:

* * * * *

(4) Agree that they and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter (including those required to be maintained under 11 CFR 9003.5), and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information that meets the requirements of 11 CFR 9003.6(b) at the times specified in 11 CFR 9007.1(b)(1). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

* * * * *

(9) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

(10) Agree that any television commercial prepared or distributed by the candidate or the candidate's authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

7. Section 9003.3 is revised to read as follows:

§ 9003.3 Allowable contributions.

(a) *Legal and accounting compliance fund—major party candidates.*

(1) *Sources.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund (''GELAC'') may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to the GELAC shall clearly state that Federal law prohibits private contributions from being used for the candidate's election and that contributions will be used solely for legal and accounting services to ensure compliance with Federal law, and shall clearly state how contribution checks should be made payable.

(B) Contributions to the GELAC shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114, and 115.

(C) Contributions shall be deposited in the GELAC only if they are designated in writing for the GELAC, or transferred pursuant to paragraph (a)(1)(ii), (iii), (iv) or (v) of this section. Any contribution which otherwise could be matched pursuant to 11 CFR 9034.2 shall not be considered designated in writing for the GELAC unless the contributor specifically redesignates it for the GELAC or unless it is accompanied by a proper designation for the GELAC. Any contribution that is designated in writing or redesignated for the GELAC shall not be matched pursuant to 11 CFR 9034.2.

(ii)(A) Contributions made during the matching payment period that do not exceed the contributor's limit for the primary election may be redesignated for the GELAC and subsequently transferred to the GELAC before the nomination only if—

(*1*) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;

(*2*) The contributions have not been submitted for matching;

(*3*) The redesignations are received within 60 days of the Treasurer's receipt of the contributions; and

(*4*) The requirements of 11 CFR 110.1(b) (5) and (l) regarding redesignation are satisfied.

(B) All contributions redesignated and deposited pursuant to paragraph (a)(1)(ii)(A) of this section shall be subject to the contribution limitations applicable for the general election pursuant to 11 CFR 110.1(b)(2)(i).

(iii) Funds received during the matching payment period that are remaining in a candidate's primary election account after the nomination may be transferred to the GELAC without regard to the contribution limitations of 11 CFR part 110 and used for any purpose permitted under this section, only if the funds are in excess of any amount needed to pay remaining net outstanding campaign obligations under 11 CFR 9034.1(b) and any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2. The excess funds so transferred may include contributions made before the beginning of the expenditure report period, which contributions do not exceed the contributor's limit for the primary election. Such contributions need not be redesignated by the contributors for the GELAC.

(iv) Contributions that are made after the beginning of the expenditure report period but which are not designated in writing for the GELAC may be redesignated for the GELAC and transferred to the GELAC only if—

(A) The funds are in excess of any amount needed to pay remaining net outstanding campaign obligations under 11 CFR 9034.1(b) and any amount required to be reimbursed to the

Presidential Primary Matching Payment Account under 11 CFR 9038.2;

(B) The contributions have not been submitted for matching; and

(C) The candidate obtains the contributor's redesignation in accordance with 11 CFR 110.1.

(v) Contributions made with respect to the primary election that exceed the contributor's limit for the primary election may be redesignated for the GELAC and transferred to the GELAC if the candidate obtains the contributor's redesignation for the GELAC in accordance with 11 CFR 110.1.

(vi) For purposes of this section, a contribution shall be considered to be designated in writing for the GELAC if—

(A) The contribution is made by check, money order, or other negotiable instrument which clearly indicates that it is made with respect to the GELAC; or

(B) The contribution is accompanied by a writing, signed by the contributor, which clearly indicates that it is made with respect to the GELAC.

(2) *Uses.* (i) Contributions to the GELAC shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* in accordance with paragraph (a)(2)(ii) of this section;

(B) To defray in accordance with paragraph (a)(2)(ii)(A) of this section, that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the GELAC;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software;

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of Federal funds, provided that the amounts so loaned are restored to the GELAC; and

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 of the United States Code and Chapter 95 of Title 26 of the United States Code, shall be initially paid from the candidate's Federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of paragraph (a)(2)(i)(B) of this section, a candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices.

(B) Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(C) If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with title 2 of the United States Code or chapter 95 of title 26 of the United States Code. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

(D) In addition, a candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 50% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(E) If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(F) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(G) Reimbursement from the GELAC may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the Federal funds account may not subsequently be transferred back to the GELAC.

(iii) Amounts paid from the GELAC for the purposes permitted by paragraphs (a)(2)(i) (A) through (F) and (H) of this section shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with paragraph (a)(2)(i)(G) of this section are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the GELAC may not be used to retire debts remaining from the presidential primaries, except that, if after payment of all expenses set out in paragraph (a)(2)(i) of this section, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to paragraph (a)(1) of this section shall be deposited and maintained in a GELAC account separate from the account described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from the GELAC account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to the GELAC account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from the GELAC account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party*

candidates. (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her GELAC, or from the candidate's primary election account in accordance with paragraph (a)(1)(iii) of this section.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's GELAC under paragraph (a) of this section for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expendute limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs. The candidate may claim a larger fundraising exemption by establishing allocation percentages for employees using the method described in paragraph (a)(2)(ii)(C) of this section.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. A candidate may exclude from the expenditure limitation the amounts described in paragraphs (a)(2)(ii) (A) and (D) of this section for payroll, overhead or computer costs or a larger amount under paragraphs (a)(2)(ii) (C) and (E) of this section.

(7) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR part 104 and § 9006.1. The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under paragraphs (c) (6) and (7) of this section and shall report such disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation the amount of payroll costs described in paragraph (b)(5) of this section.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. A candidate may exclude from the expenditure limitation the amounts described in paragraphs (a)(2)(ii) (A) and (D) of this section for payroll, overhead or computer costs or a larger amount under paragraphs (a)(2)(ii) (C) and (E) of this section.

(7) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

8. Section 9003.4 is amended by revising the last sentence of paragraph (a), and adding a new sentence to the end of the paragraph (a), to read as follows:

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible expenditures.* (1) * * * Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems and expenditures for organizational planning. Expenditures for polling that are incurred before the start of the expenditure report period are attributed as provided in 11 CFR 9034.4(e)(2).

* * * * *

9. Section 9003.5 is revised to read as follows:

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of providing that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.*

(1) For disbursements in excess of $200 to a payee, the candidate shall present a canceled check negotiated by the payee and either:

(i) A receipted bill from the payee that states that purpose of the disbursement; or

(ii) If such a receipt is not available,

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) Where the supporting documentation required in paragraphs (b)(1) (i) or (ii) of this section is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office; or

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a dairy travel expense policy.

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check.

(2) For all other disbursements, the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $1000 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets.* (1) *Capital assets* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, ''capital asset'' shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

10. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

11. Section 9004.4 is amended by revising paragraph (a), by adding new paragraph (b)(8), and by removing paragraph (c), to read as follows:

§ 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR part 9005 only for the following purposes:

(1) to defray qualified campaign expenses;

(2) To repay loans that meet the requirements of 11 CFR 100.7 (a)(1) or (b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3 (b) or (c) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) To restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(iii) 100% of salary, overhead and computer expenses incurred after the end of the expenditure report period may be paid from a legal and accounting compliance fund established pursuant to 11 CFR 9003.3, and will be presumed to be solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(5) *Gifts and monetary bonuses.* Gifts and monetary bonuses shall be considered qualified campaign expenses, provided that:

(i) Gifts for committee employees, consultants and volunteers in recognition for campaign-related activities or services do not exceed $150 total per individual and the total of all gifts does not exceed $20,000; and

(ii) All monetary bonuses for committee employees and consultants in recognition for campaign-related activities or services;

(A) Are provided for pursuant to a written contract made prior to the date of the election; and

(B) Are paid during the expenditure report period.

(b) * * *

(8) *Lost or Misplaced Items.* The cost of lost or misplaced items may be considered a nonqualified campaign expense. Factors considered by the commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance; the type of equipment involved; and the number and value of items that were lost.

12. Section 9004.5 is revised to read as follows:

§ 9004.5 Investment of public funds; other uses resulting in income.

Investment of public funds or any other use of public funds that results in income is permissible, provided that an amount equal to all net income derived from such a use, less Federal, State and local taxes paid on such income, shall be paid to the Secretary. Any net loss from an investment or other use of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

13. Section 9004.6 is revised to read as follows:

§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(2) Subject to the limitation in paragraphs (b) and (c) of this section, committees may seek reimbursement for these expenses, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(b) *Reimbursement limits.* (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purpose of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9004.7(b)(5)(i)(C), the total number of individuals shall not include national security staff.

(c) *Deducation of reimbursements from expenditures subject to the overall expenditure limitation.* (1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation:

(i) The amount of reimbursements received from media representatives in payment for the transportation and services described in paragraph (a) of this section, up to the actual cost of the transportation and services provided to media representatives; and

(ii) An additional amount of the reimbursements received from media representatives, representing the administrative costs incurred by the committee in providing these services to the media representative and seeking reimbursement for them, equal to:

(A) Three percent of the actual cost of transportation and services provided to the media representatives under this section; or

(B) An amount in excess of 3% representing the administrative costs actually incurred by the committee in providing services to the media representatives, provided that the committee is able to document the total amount of administrative costs actually incurred.

(2) For the purpose of this paragraph, ''administrative costs'' includes all costs incurred by the committee in making travel arrangements and seeking reimbursement, whether these services are performed by committee staff or by independent contractors.

(d) *Disposal of excess reimbursements.* If the committee receives reimbursements in excess of the amount deductible under paragraph (c) of this section, it shall dispose of the excess amount in the following manner:

(1) Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to a media representative shall be returned to the media representative.

(2) Any amount in excess of the amount deductible under paragraph (c) of this section that is not required to be returned to the media representative under paragraph (d)(1) of this section shall be paid to the Treasury.

(e) *Reporting.* The total amount paid by an authorized committee for the services and facilities described in paragraph (a)(1) of this section, plus the administrative costs incurred by the committee in providing these services and facilities and seeking reimbursement for them, shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee under paragraph (b)(1) of this section shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

14. Section 9004.7 is revised to read as follows:

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR 106.3, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event, and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available by the committee for Commission inspection. The itinerary shall show the time of arrival and departure and the type of events held.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection. When required to be created, a copy of the government's or charter company's official manifest shall also be maintained and made available by the committee.

(5)(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(A) The lowest unrestricted and non-discounted first class commercial air fare available for the time traveled, in the case of travel to a city served by a regularly scheduled commercial airline service; or

(B) The lowest unrestricted and non-discounted coach commercial air fare available for the time traveled, in the case of travel to a city served by regularly scheduled coach airline service, but not regularly scheduled first class airline service; or

(C) In the case of travel to a city not served by a regularly scheduled commercial airline service, the commercial charter rate for an airplane sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the greater of the amount billed or the amount required under paragraph (b)(5)(i) of this section for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline, flight number and travel service providing that fare or the charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, who are traveling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(8) Travel on corporate airplanes and other corporate conveyances is governed by 11 CFR 114.9(e).

15. Section 9004.9 is amended by revising paragraph (a)(1)(iii), adding paragraph (a)(4) and revising paragraph (d)(1), to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses.

(a) * * *

(1) * * *

(iii) An estimate of the necessary winding down costs, as defined under 11 CFR 9004.4(a)(4), submitted in the format required by paragraph (a)(4) of this section; less

* * * * *

(4) The amount submitted as an estimate of necessary winding down costs under paragraph (a)(1)(iii) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity.

* * * * *

(d)(1) *Capital assets.* For purposes of this section, the term ''capital asset'' means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as ''other assets'' under 11 CFR 9004.9(d)(2). A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired.

* * * * *

PART 9006—REPORTS AND RECORDKEEPING

16. The authority citation for part 9006 continues to read as follows:

Authority: 2 U.S.C. 434 and 26 U.S.C. 9006(b).

17. Section 9006.3 is added to read as follows:

§ 9006.3 Alphabetized schedules.

If the authorized committee(s) of a candidate file a schedule of itemized receipts, disbursements, or debts and

obligations pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or records, the schedule shall list in alphabetical order the sources of the receipts, the payees or the creditors, as appropriate. In the case of individuals, such schedule shall list all contributors, payees, and creditors in alphabetical order by surname.

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

18. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

19. Section 9007.1 is amended by revising paragraphs (b)(2)(iii), (c), (d) and (e) and adding new paragraph (f) to read as follows:

§ 9007.1 Audits.

* * * * *

(b) * * *

(2) * * *

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the staff anticipates it will present to the Commission for approval. Commission staff will prepare a written Exit Conference Memorandum that discusses these findings and recommendations. A copy of the Exit Conference Memorandum will be given to committee representatives at the exit conference. These preliminary staff findings may include an evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, the Presidential Election Campaign Fund Act and Commission regulations; the accuracy of statements and reports filed with the Commission by the candidate and committee; and preliminary calculations regarding future repayments to the United States Treasury. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these proposed findings, the projected timetable regarding the issuance of the audit report and any repayment determination, the committee's opportunity for an administrative review of any repayment determination, and the procedures involved in Commission repayment determinations under 11 CFR 9007.2.

* * * * *

(c) *Committee response to the Exit Conference Memorandum.* The candidate and his or her authorized committee may submit in writing within 60 calendar days after the exit conference, legal and factual materials disputing or commenting on the proposed findings contained in the Exit Conference Memorandum. In addition, the committee shall submit any additional documentation requested by Commission staff. Such materials may be submitted by counsel if the candidate so desires.

(d) *Approval and issuance of the audit report.* (1) Before voting on whether to approve and issue an audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate or his or her authorized committee in accordance with paragraph (c) of this section. The Commission-approved audit report may address issues other than those contained in the Exit Conference Memorandum. In addition, this report will contain a repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1).

(2) The audit report may contain issues that warrant referral to the Office of General Counsel for possible enforcement proceedings under 2 U.S.C. 437g and 11 CFR Part 111.

(3) Addenda to the audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted under paragraph (b)(3) of this section, and/or information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The procedures set forth in paragraphs (c) and (d) (1) and (2) of this section will be followed in preparing such addenda. The addenda will be placed on the public record as set forth in paragraph (e) of this section. Such addenda may also include additional repayment determination(s).

(e) *Public release of audit report.* (1) The Commission will consider the audit report in an open session agenda document. The Commission will provide the candidate and the committee with copies of any agenda document to be considered in an open session 24 hours prior to releasing the agenda document to the public.

(2) Following Commission approval of the audit report, the report will be forwarded to the committee and released to the public. The Commission will provide the candidate and committee with copies of the audit report approved by the Commission 24 hours before releasing the report to the public.

(f)(1)*Sampling.* In conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violations identified in such a sample may become the basis, in whole or in part, of any audit finding.

(2) A committee in responding to a sample-based finding shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample.

(3) Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b) (1), (2) or (3); or take any other action required by the Commission with respect to sample-based findings.

20. In § 9007.2, paragraphs (a) (2) and (3) are revised, paragraph (a)(4) added, the introductory text of paragraph (b) is republished, paragraph (b)(4) is revised, paragraphs (c) and (d) are revised, and the first two sentences of paragraph (f), the first sentence of paragraph (g), and paragraph (i) are revised to read as follows:

§ 9007.2 Repayments.

(a) * * *

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the day of the presidential election. The Commission's issuance of the audit report to the candidate under 11 CFR 9007.1(d) will constitute notification for purposes of this section.

(3) Once the candidate receives notice of the Commission's repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(4) Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9003.2(c)), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the

Federal Election Campaign Act of 1971, as amended.

* * * * *

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the fund must repay the United States Treasury under any of the circumstances described in paragraphs (b) (1) through (5) of this section.

* * * * *

(4) *Income on investment or other use of payments from the Fund.* If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the fund pursuant to 11 CFR 9004.5, it shall so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

* * * * *

(c) *Repayment determination procedures.* The Commission's repayment determination will be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(4) of this section.

(1) *Repayment determination.* The Commission will provide the candidate with a written notice of its repayment determination(s). This notice will be included in the Commission's audit report prepared pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s), as well as the evidence upon which any such determination is based. The candidate shall repay to the United States Treasury in accordance with paragraph (d) of this section, the amount which the Commission has determined to be repayable.

(2) *Administrative review of repayment determination.* If a candidate disputes the Commission's repayment determination(s), he or she may request an administrative review of the determination(s) as set forth in paragraph (c)(2)(i) of this section.

(i) *Submission of written materials.* A candidate who disputes the Commission's repayment determination(s) shall submit in writing, within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. Such materials may be submitted by counsel if the candidate so desires. The candidate's failure to timely raise an issue in written materials presented pursuant to this paragraph will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a).

(ii) *Oral hearing.* A candidate who submits written materials pursuant to paragraph (c)(2)(i) of this section may at the same time request in writing that the Commission provide such candidate with an opportunity to address the Commission in open session to demonstrate that no repayment, or a lesser repayment, is required. The candidate should identify in this request the repayment issues he or she wants to address at the oral hearing. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral hearing. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2)(ii) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(3) *Repayment determination upon review.* In deciding whether to revise any repayment determination(s) following an administrative review pursuant to paragraph (c)(2) of this section, the Commission will consider any submission made under paragraph (c)(2)(i) of this section and any oral hearing conducted under paragraph (c)(2)(ii) of this section, and may also consider any new or additional information from other sources. A determination following an administrative review that a candidate must repay a certain amount will be accompanied by a written statement of reasons supporting the Commission's determination(s). This statement will explain the legal and factual reasons underlying the Commission's determination(s) and will summarize the results of any investigation(s) upon which the determination(s) are based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate requests an administrative review of the Commission's repayment determination(s) under paragraph (c)(2) of this section, the time for repayment will be suspended until the Commission has concluded its administrative review of the repayment determination(s). Within 30 calendar days after service of the notice of the Commission's post-administrative review repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(3) Interest shall be assessed on all repayments made after the initial 90-day repayment period established at paragraph (d)(1) of this section or the 30-day repayment period established at paragraph (d)(2) of this section. The amount of interest due shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside or to be repaid under this section.

* * * * *

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a repayment determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. * * *

(g) *Newly-discovered assets.* If, after any repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. * * *

* * * * *

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

21. Section 9007.3 is amended by adding a new sentence to the end of paragraph (c), to read as follows:

§ 9007.3 Extensions of time.

* * * * *

(c) * * * If a candidate seeks an extension of any 60-day response period under 11 CFR Part 9007, the Commission may grant no more than one extension to that candidate, which extension shall not exceed 15 days.

* * * * *

22. Section 9007.5 is amended by revising paragraphs (a), (b), (c)(1)(ii) and the introductory text of paragraph (c)(4) to read as follows:

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's repayment determination or a final determination that a candidate is not entitled to all or a portion of post-election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's repayment determination or final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's repayment determination or final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the original determination process.

(2) If a candidate files a timely petition under this section challenging a Commission repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the original determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's original determination.

(c) * * *

(1) * * *

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's repayment determination under 11 CFR 9007.2(c).

* * * * *

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

* * * * *

23. Section 9007.7 is added to read as follows:

§ 9007.7 Administrative record.

(a) The Commission's administrative record for final determinations under 11 CFR 9004.9 and 9005.1, and for repayment determinations under 11 CFR 9007.2, consists of all documents and materials submitted to the Commission for its consideration in making those determinations. The administrative record will include the certification of the Commission's vote(s), the audit report that is sent to the committee (for repayment determinations), the statement(s) of reasons, and the candidate agreement. The committee may include documents or materials in the administrative record by submitting them within the time periods set forth at 11 CFR 9004.9(f)(2)(ii), 9005.1(b)(2), 9005.1(c)(4), 9007.1(c) and 9007.2(c)(2), as appropriate.

(b) The Commission's administrative record for determinations under 11 CFR 9004.9, 9005.1 and 9007.2 does not include:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions other than transcripts or audio tapes of oral hearings pursuant to 11 CFR 9007.2(c)(2), although such transcripts or tapes may be made available under 11 CFR parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR 9004.9, 9005.1 and 9007.2

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

24. The authority citation for part 9008 continues to read as follows:

Authority: 2 U.S.C. 437, 438(a)(6), 26 U.S.C. 9008, 9009(b).

25. Section 9008.12 is amended by revising the last sentence of paragraph (a)(2) to read as follows:

§ 9008.12 Repayments.

(a) * * *

(2) * * * The Commission's issuance of an audit report to the committee will constitute notification for purposes of the three year period.

* * * * *

PART 9032—DEFINITIONS

26. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

27. Section 9032.9 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 9032.9 Qualified campaign expense.

* * * * *

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). * * *

* * * * *

PART 9033—ELIGIBILITY FOR PAYMENTS

28. The authority citation for part 9033 is revised to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

29. Section 9033.1 is amended by republishing the introductory text of paragraph (b), by revising paragraph (b)(5), by adding a new second sentence to paragraph (b)(7), by revising paragraph (b)(11), and by adding new paragraph (b)(12), to read as follows:

§ 9033.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidate shall agree that:

* * * * *

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all

documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section (including those required to be maintained under 11 CFR 9033.11), and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall be made available.

* * * * *

(7) * * * The candidate and the candidate's authorized committee(s) shall also provide any material required in connection with an audit, investigation, or examination conducted pursuant to 11 CFR part 9039. * * *

* * * * *

(11) The candidate and the candidate's authorized committee(s) will pay an civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. 437g against the candidate, any authorized committees of the candidate or any agent thereof.

(12) Any television commercial prepared or distributed by the candidate or the candidate's authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

30. Section 9033.4 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

31. Section 9033.11 is revised to read as follows:

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.*Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.*

(1) For disbursements in excess of $200 to a payee, the candidate shall present a canceled check negotiated by the payee and either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available,

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) Where the supporting documentation required in paragraphs (b)(1) (i) or (ii) of this section is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office; or

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy.

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check.

(2) For all other disbursements, the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $1000 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets.*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, ''capital asset'' shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

PART 9034—ENTITLEMENTS

32. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

33. Section 9034.4 is amended by revising paragraphs (a) and (b)(3), by adding new paragraph (b)(8), by removing and reserving paragraph (c), by revising paragraph (d)(2), and by adding new paragraph (e), to read as follows:

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses*—

(1) *General.* Except as provided in paragraph (b)(3) of this section, all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made in accordance with the 11 CFR 100.8(b)(1) for the purpose of determining whether an individual should become a candidate shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b).

(3) *Winding down costs.*

(i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate has become ineligible due to the operation of 11 CFR 9033.5(b), he or she may only receive matching funds to defray costs incurred before the candidate's date of ineligibility, for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, until the candidate is eligible to receive winding down costs under paragraph (a)(3)(i) of this section.

(iii) For purposes of the expenditure limitations set forth in 11 CFR 9035.1 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. For candidates who continue to campaign or re-establish eligibility, this paragraph shall not apply to expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(5) *Gifts and monetary bonuses.* Gifts and monetary bonuses shall be considered qualified campaign expenses, provided that:

(i) Gifts for committee employees, consultants and volunteers in recognition for campaign-related activities or services do not exceed $150 total per individual and the total of all gifts does not exceed $20,000; and

(ii) All monetary bonuses for committee employees and consultants in recognition for campaign-related activities or services:

(A) Are provided for pursuant to a written contract made prior to the date of ineligibility; and

(B) Are paid no later than thirty days after the date of ineligibility.

(b) * * *

(3) *General election and post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

* * * * *

(8) *Lost or misplaced items.* The cost of lost or misplaced items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance; the type of equipment involved; and the number and value of items that were lost.

(c) [Reserved]

(d) * * *

(2) *General election.* If a candidate has received matching funds, all transfers from the candidate's primary election account to a legal and accounting compliance fund established for the general election must be made in accordance with 11 CFR 9003.3(a)(1).

(e) *Attribution of expenditures between the primary and the general election limits.* The following rules apply to candidates who receive public funding in both the primary and the general election.

(1) *General rule.* Any expenditure for goods or services that are used exclusively for the primary election campaign shall be attributed to the limits set forth at 11 CFR 9035.1. Any expenditure for goods or services that are used exclusively for the general election campaign shall be attributed to the limits set forth at 11 CFR 110.8(a)(2), as adjusted under 11 CFR 110.9(c).

(2) *Polling expenses.* Polling expenses shall be attributed according to when the results of the poll are received. If the results are received on or before the date of the candidate's nomination, the expenses shall be considered primary election expenses. If results are received from a single poll both before and after the date of the candidate's nomination, the costs shall be allocated between the primary and the general election limits based on the percentage of results received during each period.

(3) *State or national campaign offices.* Overhead expenditures and payroll costs incurred in connection with state or national campaign offices, shall be attributed according to when the usage occurs or the work is performed. For purposes of this section, overhead expenditures shall have the same meaning as set forth in 11 CFR 106.2(b)(2)(iii)(D). Expenses for usage of offices or work performed on or before the date of the candidate's nomination shall be attributed to the primary election, except for periods when the office is used only by persons working exclusively on general election campaign preparations.

(4) *Campaign materials.* Expenditures for campaign materials, including bumper stickers, campaign brochures, buttons, pens and similar items, that are purchased by the primary election campaign committee and later transferred to and used by the general election committee shall be attributed to the general election limits. Materials transferred to but not used by the general election committee shall be attributed to the primary election limits.

(5) *Media production costs.* For media communications that are broadcast or published both before and after the date of the candidate's nomination, 50% of the media production costs shall be attributed to the primary election limits,

and 50% to the general election limits. Distribution costs, including such costs as air time and advertising space in newspapers, shall be paid for 100% by the primary or general election campaign depending on when the communication is broadcast or distributed.

(6) *Campaign Communications.* (i) *Solicitations.* The costs of a solicitation shall be attributed to the primary election or to the GELAC, depending on the purpose of the solicitation. If a candidate solicits funds for both the primary election and for the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC.

(ii) *Other communications.* Except as provided in paragraph (e)(5) of this section, the costs of a campaign communication that does not include a solicitation shall be attributed to the primary or general election limits based on the date on which the communication is broadcast, published or mailed. The cost of a communication that is broadcast, published or mailed before the date of the candidate's nomination shall be attributed to the primary election limits.

(7) *Travel costs.* Expenditures for campaign-related transportation, food, and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense. Travel to and from the convention shall be attributed to the primary election. Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if the travel occurs before the candidate's nomination.

34. Section 9034.5 is amended by revising paragraphs (b), (c)(1) and (f) to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(b) *Liabilities.* (1) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5.

(2) The amount submitted as estimated necessary winding down costs under paragraph (a)(1) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity.

(c)(1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when received by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as ''other assets'' under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets shall be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items received after the date of ineligibility must be valued at their fair market value on the date received.

* * * * *

(f)(1) With each submission for matching fund payments filed after the candidate's date of ineligibility, the candidate shall certify that, as of the close of business on the last business day preceding the date of submission for matching funds, his or her remaining net outstanding campaign obligations equal or exceed the amount submitted for matching.

(2) A candidate who makes a submission for matching fund payments after his or her date of ineligibility shall also submit a revised statement of net outstanding campaign obligations. This revised statement shall be due before the next regularly scheduled payment date, on a date to be determined and published by the Commission. This statement shall reflect the financial status of the campaign as of the close of business three business days before the due date of the statement. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(3) After a candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, the candidate shall also submit a revised statement of net outstanding campaign obligations. The revised statement shall be filed on a date to be determined and published by the commission, which will be before the next regularly scheduled payment date.

35. Section 9034.6 is revised to read as follows:

§ 9034.6 Expenditures for transportation and services made available to media personnel; reimbursements.

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement for these expenses, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(b) *Reimbursement limits.* (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service

personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9034.7(b)(5)(i)(C), the total number of individuals shall not include national security staff.

(c) *Deduction of reimbursements from expenditures subject to the overall expenditure limitations.*

(1) The Committee may deduct from the amount of expenditures subject to the overall expenditure limitation:

(i) The amount of reimbursements received from media representatives in payment for the transportation and services described in paragraph (a) of this section, up to the actual cost of the transportation and services provided to media representatives; and

(ii) An additional amount of the reimbursements received from media representatives, representing the administrative costs incurred by the committee in providing these services to the media representatives and seeking reimbursement for them, equal to:

(A) Three percent of the actual cost of transportation and services provided to the media representatives under this section; or

(B) An amount in excess of 3% representing the administrative costs actually incurred by the committee in providing services to the media representatives, provided that the committee is able to document the total amount of administrative costs actually incurred.

(2) For the purposes of this paragraph, ''administrative costs'' includes all costs incurred by the committee in making travel arrangements and seeking reimbursement, whether these services are performed by committee staff or by independent contractors.

(d) *Disposal of excess reimbursements.* If the committee receives reimbursements in excess of the amount deductible under paragraph (c) of this section, it shall dispose of the excess amount in the following manner:

(1) Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to a media representative shall be returned to the media representative.

(2) Any amount in excess of the amount deductible under paragraph (c) of this section that is not required to be returned to the media representative under paragraph (d)(1) of this section shall be paid to the Treasury.

(e) *Reporting.* The total amount paid by an authorized committee for the services and facilities described in paragraph (a)(1) of this section, plus the administrative costs incurred by the committee in providing these services and facilities and seeking reimbursement for them, shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee under paragraph (b)(1) of this section shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

36. Section 9034.7 is revised to read as follows:

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR 106.3, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available by the committee for Commission inspection. The itinerary shall show the time of arrival and departure and the type of event held.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection. When required to be created, a copy of the government's or the charter company's official manifest shall also be maintained and made available by the committee.

(5)(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(A) The lowest unrestricted and non-discounted first class commercial air fare available for the time traveled, in the case of travel to a city served by a regularly scheduled commercial airline service; or

(B) The lowest unrestricted and non-discounted coach commercial air fare available for the time traveled, in the case of travel to a city served by regularly scheduled coach airline service, but not regularly scheduled first class airline service; or

(C) In the case of travel to a city not served by a regularly scheduled commercial airline service, the commercial charter rate for an airplane sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the greater of the amount billed or the amount required under paragraph (b)(5)(i) of this section for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled,

including the airline, the flight number and travel service providing that fare or the charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, who are traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trips is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(8) Travel on corporate airplanes and other corporate conveyances is governed by 11 CFR 114.9(e).

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

37. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

38. Section 9036.2 is amended by revising paragraph (b)(1)(ii) and adding a new sentence to the end of paragraph (b)(1)(vi), to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(ii) The candidate is required to submit an alphabetical list of contributors (either solely in magnetic media from or in both printed and magnetic media forms), but not segregated by State as required in the threshold submission;

* * * * *

(vi) * * * In lieu of submitting photocopies, the candidate may submit digital images of checks, written instruments and deposit slips as specified in the Computerized Magnetic Media Requirements. The candidate shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and shall include digital images of every contribution received and imaged on or after the date of the previous matching fund request. Contributions and other documentation not imaged shall be submitted in photocopy form.

* * * * *

39. In section 9036.5, the introductory text of paragraph (a) is revised to read as follows:

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), or of an inquiry pursuant to 11 CFR 9039.3 that results in a downward adjustment to the amount of certified matching funds, a candidate may choose to:

* * * * *

PART 9037—PAYMENTS AND REPORTING

40. The authority citation for part 9037 continues to read as follows:

Authority: 26 U.S.C. 9037 and 9039(b).

41. Section 9037.4 is added to read as follows:

§ 9037.4 Alphabetized schedules.

If the authorized committee(s) of a candidate file a schedule of itemized receipts, disbursements, or debts and obligations pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or records, the schedule shall list in alphabetical order the sources of the receipts, the payees or the creditors, as appropriate. In the case of individuals, such schedule shall list all contributors, payees, and creditors in alphabetical order by surname.

PART 9038—EXAMINATIONS AND AUDITS

42. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

42A. The part heading is revised as set forth above.

43. Section 9038.1 is amended by revising paragraphs (b)(2)(iii), (c), (d) and (e) and adding new paragraph (f) to read as follows:

§ 9038.1 Audit.

* * * * *

(b) * * *

(2) * * *

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the staff anticipates it will present to the Commission for approval. Commission staff will prepare a written Exit Conference Memorandum that discusses these findings and recommendations. A copy of the Exit Conference Memorandum will be given to committee representatives at the exit conference. These findings may include an evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, the Presidential Matching Payment Account Act and Commission regulations; the accuracy of statements and reports filed with the Commission by the candidate and committee; and preliminary calculations regarding future repayments to the United States Treasury. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these proposed findings, the projected timetable regarding the issuance of the audit report and any repayment determination, the committee's opportunity for an administrative review of any repayment determination, and the procedures involved in Commission repayment determinations under 11 CFR 9038.2.

* * * * *

(c) *Committee Response to the Exit Conference Memorandum.* The candidate and his or her authorized committee may submit in writing within 60 calendar days after the exit conference, legal and factual materials disputing or commenting on the proposed findings contained in the Exit Conference Memorandum. In addition, the committee shall submit any additional documentation requested by

Commission staff. Such materials may be submitted by counsel if the candidate so desires.

(d) *Approval and issuance of audit report.* (1) Before voting on whether to issue and approve an audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate or his or her authorized committee in accordance with paragraph (c) of this section. The Commission-approved audit report may address issues other than those contained in the Exit Conference Memorandum. In addition, this report will contain a repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1).

(2) The audit report may contain issues that warrant referral to the Office of General Counsel for possible enforcement proceedings under 2 U.S.C. 437g and 11 CFR part 111.

(3) Addenda to the audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted under paragraph (b)(3) of this section, and/or information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The procedures set forth in paragraphs (c) and (d) (1) and (2) of this section will be followed in preparing such addenda. The addenda will be placed on the public record as set forth in paragraph (e) of this section. Such addenda may also include additional repayment determination(s).

(e) *Public release of audit report.* (1) The Commission will consider the audit report in an open session agenda document. The Commission will provide the candidate and the committee with copies of any agenda document to be considered in an open session 24 hours prior to releasing the agenda document to the public.

(2) Following Commission approval of the audit report, the report will be forwarded to the committee and released to the public. The Commission will provide the candidate and committee with copies of the audit report approved by the Commission 24 hours before releasing the report to the public.

(f)(1) *Sampling.* In conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violations identified in such a sample may become the basis, in whole or in part, of any audit finding.

(2) A committee in responding to a sample-based finding concerning excessive or prohibited contributions shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample.

(3) Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b) (1), (2) or (3); or take any other action required by the Commission with respect to sample-based findings.

44. Section 9038.2 is amended by revising paragraphs (a) (2) and (3), (b)(2)(iii), (b)(4), (c), (d), (f), and the first sentence of paragraph (g), and by adding paragraphs (a)(4) and (i), to read as follows:

§ 9038.2 Repayments.

(a) * * *

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the matching payment period. The Commission's issuance of the audit report to the candidate under 11 CFR 9038.1(d) will constitute notification for purchases of this section.

(3) Once the candidate receives notice of the Commission's repayment determination under this section, the candidate should given preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owned by the committee.

(4) Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

* * * * *

(b) * * *

(2) * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility. For the purposes of this paragraph (b)(2)(iii)—

(A) Total deposits is defined in accordance with 11 CFR 9038.3(c)(2); and

(B) In seeking repayment for non-qualified campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to the candidate, using the assumption that the last payment has been expended on a last-in, first-out basis.

* * * * *

(4) *Surplus; income derived from the use of surplus public funds.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from an investment or other use of surplus public funds after the candidates's date of ineligibility, less Federal, State and local paid on such income, shall be paid to the Treasury.

(c) *Repayment determination procedures.* The Commission's repayment determination will be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(4) of this section.

(1) *Repayment determination.* The Commission will provide the candidate with a written notice of its repayment determination(s). This notice will be included in the Commission's audit report prepared pursuant to 11 CFR 9038.1(d), or inquiry report pursuant to 11 CFR 9039.3, and will set forth the legal and factual reasons for such determination(s), as well as the evidence upon which any such determination is based. The candidate shall repay to the United States Treasury in accordance with paragraph (d) of this section, the amount which the Commission has determined to be repayable.

(2) *Administrative review of repayment determination.* If a candidate disputes the Commission's repayment determination(s), he or she may request an administrative review of the determination(s) as set forth in paragraph (c)(2)(i) of this section.

(i) *Submission of written materials.* A candidate who disputes the

Commission's repayment determination(s) shall submit in writing, within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. Such materials may be submitted by counsel if the candidate so desires. The candidate's failure to timely raise an issue in written materials presented pursuant to this paragraph will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a).

(ii) *Oral hearing.* A candidate who submits written materials pursuant to paragraph (c)(2)(i) of this section may at the same time request in writing that the Commission provide such candidate with an opportunity to address the Commission in open session to demonstrate that no repayment, or a lesser repayment, is required. The candidate should identify in this request the repayment issues he or she wants to address at the oral hearing. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral hearing. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2)(ii) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(3) *Repayment determination upon review.* In deciding whether to revise any repayment determination(s) following an administrative review pursuant to paragraph (c)(2) of this section, the Commission will consider any submission made under paragraph (c)(2)(i) and any oral hearing conducted under paragraph (c)(2)(ii), and may also consider any new or additional information from other sources. A determination following an administrative review that a candidate must repay a certain amount will be accompanied by a written statement of reasons supporting the Commission's determination(s). This statement will explain the legal and factual reasons underlying the Commission's determination(s) and will summarize the results of any investigation(s) upon which the determination(s) are based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate requests an administrative review of the Commission's repayment determination(s) under paragraph (c)(2) of this section, the time for repayment will be suspended until the Commission has concluded its administrative review of the repayment determination(s). Within 30 calendar days after service of the notice of the Commission's post-administrative review repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(3) Interest shall be assessed on all repayments made after the initial 90-day repayment period established at paragraph (d)(1) of this section or the 30-day repayment period established at paragraph (d)(2) of this section. The amount of interest due shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

* * * * *

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a repayment determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. * * *

* * * * *

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a repayment determination in accordance with 11 CFR 9038.5(a). The candidate may request a stay of a repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

45. Section 9038.4 is amended by adding a sentence to the end of paragraph (c), to read as follows:

§ 9038.4 Extensions of time.

* * * * *

(c) * * * If a candidate seeks an extension of any 60-day response period under 11 CFR part 9038, the Commission may grant no more than one extension to that candidate, which extension shall not exceed 15 days.

* * * * *

46. Section 9038.5 is amended by revising paragraphs (a), (b), (c)(1)(ii), and the introductory text of (c)(4), to read as follows:

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's repayment determination under 11 CFR 9038.2(c), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination or repayment determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination or repayment determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the original determination process.

(2) If a candidate files a timely petition under this section challenging a Commission repayment determination, the time for repayment of the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the original determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's original determination.

(c) *Stay of repayment determination pending appeal.*

(1) * * *

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section, or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's repayment determination under 11 CFR 9038.2(c).

* * * * *

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's repayment determination under 11 CFR 9038.2(c) and shall be the greater of:

* * * * *

47. Section 9038.7 is added to read as follows:

§ 9038.7 Administrative record.

(a) The Commission's administrative record for final determinations under 11 CFR part 9033, sections 9034.5, 9036.5 and part 9039, and for repayment determinations under 11 CFR 9038.2, consists of all documents or materials submitted to the Commission for its consideration in making those determinations. The administrative record will include the certification of the Commission's vote(s), the audit report that is sent to the committee (for repayment determinations), the statement(s) of reasons, and the candidate agreement. The committee may include documents or materials in the administrative record by submitting them within the time periods set forth at 11 CFR 9033.3(b), 9033.4(a)(2), 9033.6(c), 9033.7(b), 9033.9(b), 9034.5(g)(2), 9036.5(e), 9038.1(c) and 9038.2(c)(2), as appropriate.

(b) The Commission's administrative record for determinations under 11 CFR part 9033, sections 9034.5, 9036.5 and 9038.2 and part 9039 does not include:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions other than transcripts or audio tapes of oral hearings pursuant to 11 CFR 9038.2(c)(2), although such transcripts or tapes may be made available under 11 CFR parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR part 9033, §§ 9034.5, 9036.5 and 9038.2 and part 9039.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

48. The authority citation for part 9039 continues to read as follows:

Authority: 26 U.S.C. 9039.

49. Section 9039.3 is amended by adding new paragraph (b)(4), to read as follows:

§ 9039.3 Examination and audits; investigations.

* * * * *

(b) * * *

(4) If, at the close of the inquiry, the Commission determines that no action or no further action is warranted, the Commission shall so notify the candidate. If the inquiry results in an adjustment to the amount of certified matching funds, the procedures set forth at 11 CFR 9036.5 or 9038.1 shall be followed, as appropriate. If the inquiry coincides with an audit undertaken pursuant to 11 CFR 9038.1, the information obtained in the inquiry will be utilized in making the repayment determination. If the inquiry results in an initial or additional repayment determination, the procedures set forth at 11 CFR 9038.2, 9038.4, and 9038.5 shall be followed.

Dated: June 12, 1995.

Danny L. McDonald,

Chairman.

[FR Doc. 95–14667 Filed 6–15–95; 8:45 am]

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federal register

Friday
June 16, 1995

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting Supplemental Proposals for Migratory Game Bird Hunting Regulations; Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document further describes proposed changes from 19940995 hunting regulations and provides additional information that will facilitate establishment of the 19950996 hunting regulations. This document also announces the meetings of the Service Migratory Bird Regulations Committee.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early seasons on June 20, 21, and 22, and for late seasons on August 1, 2, and 3. Public hearings on proposed early- and late-season frameworks will be held at 9:00 a.m. on June 22 and August 3, 1995, respectively. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 21, 1995, and for late-season proposals will end on September 4, 1995.

ADDRESSES: Meetings of the Service Migratory Bird Regulations Committee will be held in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, ARLSQ Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358091714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1995

On March 24, 1995, the Service published in the **Federal Register** (60 FR 15642) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES**. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are scheduled for publication on or about August 16, 1995, and those for late seasons on or about September 25, 1995.

On June 22, 1995, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds and waterfowl hunted during early seasons and the recommended hunting regulations for these species.

On August 3, 1995, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 22 public hearing.

Announcement of Service Migratory Bird Regulations Committee Meetings

The meeting on June 20 is to review information on the current status of migratory shore and upland game birds and to develop 19950996 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. The June 21 meeting is to ensure that the Service's regulations recommendations are developed with the benefit of full consultation on the above issues.

The meeting on August 1 is to review information on the current status of waterfowl and to develop 19950996 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings. The August 2 meeting is to ensure that the Service's regulations recommendations are developed with the benefit of full consultation on the above issues.

In accordance with Departmental policy regarding meetings of the Service Migratory Bird Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 270928, Charleston, West Virginia (Holiday Inn, Charleston House)

Mississippi Flyway—July 290930, Green Bay, Wisconsin (Mid-way Best Western Motel)

Central Flyway—July 270928, Custer, South Dakota (Blue Bell Lodge and Resort - Custer State Park)

Pacific Flyway—July 28, Reno, Nevada (Peppermill Hotel)

Although agendas are not yet available, these meetings usually commence at 8:30 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published on March 24, 1995, in the **Federal Register**. Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective public participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations-development process. The Service will publish responses to proposals, written comments, and public-hearing testimony when final frameworks are developed.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 24, 1995, **Federal Register**.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

In the March 24, 1995, **Federal Register**, the Service proposed that the choice of regulations frameworks for the 19950996 regular duck season be limited to three sets of frameworks similar to those in effect during the 19790993 hunting seasons. These three framework options were generally described as restrictive, moderate, or liberal. The Service also subsequently proposed in an information package made available on March 24, 1995, specific guidelines for selecting one of these framework packages based on the size of the mallard breeding population and habitat conditions in May 1995. The information package contained specific details of this year's proposed regulatory ''packages'' for each flyway, guidelines for the use of these regulatory packages, and a general description of the harvest management objective and duck population dynamics that were considered in the process. Based on public comments to date, the Service is continuing to refine the guidelines for the use of these regulatory packages and the specific details of the proposed packages for each flyway in this transition year to the Service's proposed development of a more formal and objective decision-making process.

All four Flyway Councils have endorsed the proposal to limit the choice of 19950996 frameworks to three packages. However, the Pacific, Central, and Mississippi Flyway Councils recommended some modifications to the specific regulatory packages proposed, and these modifications are identified below under ''Framework Dates'', ''Season Length'', and ''Bag Limits.''

The Atlantic Flyway Council endorsed the guidelines proposed for selecting a regulations package in 1995, but commented that the guidelines were based only on mid-continent mallards, which comprise a very small portion of the duck harvest in the Atlantic Flyway. The Lower-Region Regulations Committee of the Mississippi Flyway Council also endorsed the guidelines. The Central Flyway Council and the Upper-Region Regulations Committee of the Mississippi Flyway Council expressed concerns about using the guidelines before the proposed general approach to managing duck harvests has been thoroughly reviewed by all interested parties. These concerns related only to the 19950996 hunting season. The Pacific Flyway Council supported the general format of the guidelines, but expressed reservations about guidelines based upon mid-continent mallards and a harvest strategy that does not permit greater harvest opportunity on lightly-harvested species. Further, the Council urged development of a specific harvest strategy for pintails, the second-most important species in the Pacific Flyway harvest.

B. Framework Dates

In the frameworks packages proposed for 19950996, the Pacific and Central Flyway Councils and the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening and closing dates in all 3 packages be the Saturday nearest October 1 and the Sunday nearest January 20. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the opening and closing dates be the Saturday nearest October 1 and January 20 in all three packages.

C. Season Length

In the frameworks packages proposed for 19950996, the Pacific Flyway Council recommended that in the ''restrictive'' package, the season length be 60 days instead of 59 days.

E. Bag Limits

In the frameworks packages proposed for 19950996, the Pacific Flyway Council recommended that mallard daily bag limits be 5 (with 1 hen) instead of 4 (with 1 hen) in the ''moderate'' package and 6 (with 2 hens) instead of 6 (with 1 hen) in the ''liberal'' package. The Council also recommended that the pintail daily bag limit in the ''liberal'' package be 3 birds instead of 2.

The Central Flyway Council recommended reinstating the point-system option for establishing the daily bag limit for ducks in 1995. Further, the Council also would like to work with the Service in another cooperative review of its point-system policy.

F. Zones and Split Seasons

The Central Flyway Council recommended that the Service eliminate its policy that States may not zone and/or use a 3-way split season simultaneously within a special management unit and the remainder of the State when establishing duck hunting zones.

G. Special Seasons/Species Management

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that during the first 9 days of the regular duck season, production States be given the option of 1 additional blue- or green-winged teal in the bag limit during a 3-year experimental period.

i. Canvasback

As part of the general harvest strategy, the Pacific Flyway Council recommended that limits on canvasbacks follow the Service's harvest strategy; however, the Council believes that canvasbacks should be managed by western and eastern populations.

ii. September Teal Seasons

The Central Flyway Council recommended that the September teal season in the Central Flyway be increased from 9 to 16 days.

4. Canada Geese

A. Special Seasons

The Atlantic Flyway Council recommended that Delaware and Rhode Island be permitted to initiate a 3-year experimental resident Canada goose season with framework dates of September 1 to 15.

The Atlantic Flyway Council also recommended that Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, and Virginia be permitted to expand the hunt areas of their experimental goose seasons.

In North Carolina, the Atlantic Flyway Council requested that the framework date for the experimental resident Canada goose season in the Northeast hunt area be September 1 to 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended modification of the early Canada goose seasons criteria to allow any State to conduct a non-experimental special season between the dates of September 1 and 15. The Committee recommended that States continue monitoring hunter activity and success until they begin participation in the Harvest Information Program and close areas where evidence from band recoveries or other sources indicated unacceptable (greater than 10 percent) harvest non-target populations of concern. Special seasons occurring after September 15 would be required to meet all existing Service criteria for special resident Canada goose seasons and would not be altered in any way during the 3-year experimental period.

If the above modifications to the special-season criteria are not approved, the Upper-Region Regulations

Committee recommended the following experimental special seasons:

In Indiana, a Statewide season during September 1 to 15.

In Illinois, a season in the nine northeast counties of the State during September 9 to 18.

In Wisconsin, expand the size of the Southeastern Zone for a September 1 to 13 season.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the flyway-wide framework for special resident giant Canada goose seasons be September 1 to 15 where areas of concern do not exist.

In Tennessee, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the zone for the special resident Canada goose season in east Tennessee be expanded from 11 to 28 counties, east of and including Anderson, Campbell, Hamilton, Rhea, and Roane Counties. The Committee also recommended that Tennessee be permitted to hold a special September Canada goose season in the Kentucky/Barkley Lakes Zone in west Tennessee.

The Pacific Flyway Council requested modification of the early Canada goose seasons criteria to allow any State to conduct a season between the dates of September 1 and 15 for a 3-year experimental period. The Council recommended that States continue monitoring hunter activity and success until they begin participation in the Harvest Information Program and close areas where evidence from band recoveries or other sources indicated unacceptable (greater than 10 percent) harvest of non-target populations of concern. Special seasons occurring after September 15 would be required to meet all existing Service criteria for special Canada goose seasons and would not be altered in any way during the 3-year experimental period.

The Pacific Flyway Council recommended continuation of the early September Canada goose season in southwestern Wyoming and that an experimental hunt be allowed in Teton County, Wyoming, where it would be by State permit (no more than 40 permits may be issued) with framework dates of September 1 to 15 and a maximum limit of 2 Canada geese permitted per season.

B. Regular Seasons

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a September 23 framework opening date for regular goose seasons in the Upper Peninsula of Michigan and Statewide in Wisconsin.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Canada goose hunting season in Louisiana be expanded from the Southwest Louisiana Zone to Statewide, using the same guidelines followed during the past 5 years.

The Pacific Flyway Council recommended a daily bag limit of 1 cackling Canada goose in northwestern Oregon and southwestern Washington. The Council recommends allowing one additional cackling Canada goose in the bag if additional Canada goose hunting season closures are required to further protect dusky Canada geese, however, and provided that the 1995 breeding pair index indicates a continued increase in the cackling Canada goose population and the strategy for harvesting not more than 1,500 in northwestern Oregon and 1,000 in southwestern Washington remains unchanged.

7. Snow and Ross's (Light) Geese

The Central Flyway Council recommended that framework dates for hunting light geese in the Central Flyway be extended to March 10.

8. Tundra Swans

The Pacific Flyway Council recommended a 5-year experimental swan season that would allow a restricted take of trumpeter swans in otherwise tundra swan hunting seasons, with the previous tundra swan seasons and areas open to hunting being modified to minimize the take of trumpeter swans. The Council seeks a responsible balance between its efforts to enhance expansion of the Rocky Mountain Population (RMP) of trumpeter swans and accommodate opportunities to hunt tundra swans.

The Pacific Flyway Council recommended changing the closing date for swan hunting seasons from the Sunday closest to January 20 to December 1 for Montana, the Sunday closest to December 15 for Utah, and the Sunday following January 1 for Nevada.

The Pacific Flyway Council also recommended changes to the swan hunt areas in Montana and Utah. In Montana, those portions of Pondera and Teton Counties west of U.S. Highways 2870989 would be deleted from the open area, while Choteau County would be added. Utah would be reduced from the Statewide hunt area that existed prior to 1994 to just the Great Salt Lake Basin, i.e., those portions of Box Elder, Weber, Davis, Salt Lake, and Tooele Counties bounded by Utah State Highway 30, Interstate 80/84, Interstate 15, and Interstate 80.

The Pacific Flyway Council also recommended that the number of swan permits remain unchanged at 500 for Montana and 650 for Nevada but increased from 2,500 to 2,750 for Utah. The Council deemed the increase in Utah permits as appropriate to partially offset anticipated reduction in swan hunting opportunities resulting from the recommended changes.

In addition to the foregoing changes, the Pacific Flyway Council proposed limiting the potential take of trumpeter swans by establishing a quota of 20 trumpeter swans which would be divided between Utah and Nevada prior to the season. A State season would be allowed, within the frameworks, so long as that quota had not been attained; however, the season would be closed through emergency action by the affected State upon attainment of that quota. To measure the take of trumpeters with respect to the quota, the Council recommended hunters in Utah and Nevada be required to participate in a mandatory parts check at designated sites within 72 hours of harvesting any swan. In Montana, where there would be no recommended quota, species composition of the harvest would be determined through the voluntary bill-measurement card program currently operated by the State.

Mr. Laurence N. Gillette, representing The Trumpeter Swan Society (TTSS), submitted an integrated package of recommendations for enhancing efforts to expand both the winter and summer range of RMP of trumpeter swans while allowing continuation of significantly modified tundra swan seasons in Montana, Utah, and Nevada. Dispersal of trumpeter swans from winter concentration areas in less-than-optimum, high-mountain habitats in the Tri-state Area of Montana, Wyoming, and Idaho is deemed of primary importance and, if accomplished, would likely result in trumpeter swans following tundra swan migration corridors through hunt areas in Utah and Nevada enroute to California.

Aside from recommendations regarding management actions directed only at RMP trumpeter swans, TTSS recommended that the Service minimize the mortality of trumpeters during tundra swan seasons by: (1) authorizing seasons only during times of peak tundra swan abundance when the generally later-arriving RMP trumpeter swans are less likely to be present and the ratio of tundra to trumpeters is highest, i.e., Montana and Utah - open early to mid-October and close by December 1, Nevada - open early to mid-October and close by January 1; (2) authorizing tundra swan hunting only in key tundra swan hunting areas, i.e., Montana (Pacific Flyway portion) -

Freezeout Lake and currently hunted areas east of U.S. Highway 287 between Augusta and Choteau and east of U.S. Highway 89 between Choteau and the Blackfeet Indian Reservation; Utah - Great Salt Lake Basin, specifically those portions of Box Elder, Weber, Davis, Salt Lake and Tooele Counties that lie south of Utah State Highway 30 and Interstate 84, west of Interstate 15, and north of Interstate 80; Nevada - same as in 1994 because swan hunting is currently restricted to concentration areas in western Nevada; and (3) identifying specific hunt management actions and prohibitions on the Bear River Migratory Bird Refuge in Utah.

Should the above three recommendations regarding tundra swan hunting be fully implemented, TTSS would not object to the Service authorizing an accidental harvest quota of not more than 25 trumpeter swans for the Pacific Flyway States and, thereby, removing liability from tundra swan hunters mistakenly shooting a trumpeter swan. The quota would be subject to the following: (1) the quota would be allocated prior to the season, (2) a State could optionally zone and allocate the quota among zones before the season, but the zone or entire Statewide hunt area will close immediately if the quota is attained, (3) require that swans be tagged immediately and brought in to be checked and measured within 3 days, and (4) each permittee must either check a tagged bird or submit an unused tag at the end of the season, with penalties for noncompliance. Specific efforts to monitor RMP trumpeter swans and to educate hunters were recommended.

Service Response: During 1994, the Service restricted the tundra swan season and hunt areas in Utah and required Montana, Utah, and Nevada to measure the accidental take, if any, of trumpeter swans during the tundra swan seasons. Pending reports on the occurrence and take of trumpeter swans in the hunt areas last year, possible additional changes may be warranted. The Service believes continued tundra swan hunting in these three States is warranted but that seasons may be modified to minimize, but not preclude, the accidental take of trumpeter swans. A general swan season with a limited, biologically acceptable, but very controlled take of trumpeter swans may be a feasible approach to accommodate management objectives for both species. Final decision on such an approach, however, will be deferred until the late-season final frameworks, when all public comment has been considered.

9. Sandhill Cranes

The Central Flyway Council recommended that the Wyoming sandhill crane hunting season be expanded to Park and Bighorn Counties.

The Pacific Flyway Council recommended following the management plan with respect to seasons on the Rocky Mountain Population of greater sandhill cranes. Pending final results of the March 1995 survey which should be available in June 1995, harvest guidelines would allow an open season in the States of Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming if the population is above 16,000 cranes; otherwise, there would be no open season. With an open season, there would be no change in frameworks.

14. Woodcock

The Atlantic Flyway Council recommended that woodcock season frameworks remain unchanged in the Eastern Region for 19950996 unless adverse weather substantially depresses the breeding populations as measured by the 1995 Singing Ground Survey. The Council believes that population declines are attributed to habitat loss and degradation rather than due to current harvest levels.

18. Alaska

The Pacific Flyway Council recommended changes in bag and possession limits for ducks in Alaska. Specifically, the Council requested for the framework set and the combined moderate-liberal framework set, respectively, the following bag and possession limits: North Zone 8/24 or 10/30, Gulf Coast Zone 6/18 or 8/24, and Southeast, Pribilof/Aleutian, and Kodiak zones 5/15 or 7/21; pintail limits 2/4; and canvasback limits 2/4. Sea duck limits of 15/30 would be separate, with seasons to remain closed on spectacled and Steller's eiders.

20. Puerto Rico

Puerto Rico recommended that the daily bag limit for ducks be increased from 3 to 4 birds and that the daily bag limit for snipe be increased from 6 to 8 birds.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document,''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 880914),'' filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the **Federal Register** dated March 24, 1995 (60 FR 15642), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis (FRIA), and publication of a summary of the latter. Although a FRIA is no longer required, the economic analysis contained in the FRIA was reviewed and the Service determined that it met the requirements of E.O. 12866. However, the Service is currently preparing a Small Entity Flexibility Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), to further document the significant beneficial economic effect on a substantial number of small entities. This rule was not subject to review by the Office of Management and Budget (OMB) under E.O. 12866.

These proposed regulations contain no information collections subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, the Service does utilize information acquired through other various information collections in the formulation of migratory game bird hunting regulations. These information collection requirements have been approved by OMB and assigned clearance numbers 1018090005, 1018090006, 1018090008, 1018090009, 1018090010, 1018090015, 1018090019, and 1018090023.

Authorship

The primary authors of this proposed rule are Ron W. Kokel and Patricia R. Hairston, Office of Migratory Bird Management.

List of Subjects in 50 CFR part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 19950996 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 70309711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a09d and e09j).

Dated: June 5, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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June 16, 1995

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of June 1, 1995, of 28 rescission proposals and seven deferrals contained in five special messages for FY 1995. These messages were transmitted to Congress on October 18, and December 13, 1994; and on February 6, February 22, and May 2, 1995.

Rescissions (Attachments A and C)

As of June 1, 1995, 28 rescission proposals totaling $1,199.8 million had been transmitted to the Congress. Congress approved two of the Administration's rescission proposals in P.L. 104–6. A total of $71.6 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1995 rescission proposals.

Deferrals (Attachments B and D)

As of June 1, 1995, $1,772.9 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1995.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

59 FR 54066, Thursday, October 27, 1994

59 FR 67108, Wednesday, December 28, 1994

60 FR 8842, Wednesday, February 15, 1995

60 FR 12636, Tuesday, March 7, 1995

60 FR 24692, Tuesday, May 9, 1995

Alice M. Rivlin,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1995 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President.....	1,199.8
Rejected by the Congress.....	---
Amounts rescinded by P.L. 104-6, the FY 1995 Emergency Supplemental Appropriations Act.....	-71.6
Currently before the Congress.....	1,128.2

ATTACHMENT B

STATUS OF FY 1995 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	4,699.1
Routine Executive releases through June 1, 1995 (OMB/Agency releases of $2,928.7 million, partially offset by cumulative positive adjustment of $2.5 million).....	-2,926.2
Overturned by the Congress.....	---
Currently before the Congress.....	1,772.9

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Foreign Agricultural Service								
Public Law 480 program account	R95-1		43,865	2-6-95	43,865	3-28-95		
Public Law 480 grants, title I (OFD), II, and III			98,635	2-6-95	98,635	3-28-95		
Food and Nutrition Service								
Food stamp program	R95-2		2,900	2-6-95	2,900	3-28-95		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public broadcasting facilities, planning and construction	R95-3		18,000	2-6-95	18,000	3-31-95		
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
School improvement programs	R95-4		138,084	2-6-95	35,000	3-15-95		
	R95-4A		-35,000	2-22-95	103,084	3-30-95	65,000	P.L. 104-6
Office of Vocational and Adult Education								
Vocational and adult education	R95-5		43,888	2-6-95	43,888	3-30-95		
Office of Postsecondary Education								
Higher education	R95-6		26,903	2-6-95	26,903	3-30-95		
College housing and academic facilities program	R95-7		168	2-6-95	168	3-30-95		
Office of Educational Research and Improvement								
Education research, statistics, and improvement	R95-8		750	2-6-95	750	3-30-95		
Libraries	R95-9		12,942	2-6-95	12,942	3-31-95		
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R95-10		29,147	2-6-95	29,147	3-28-95		

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Centers for Disease Control and Prevention								
Disease control, research, and training	R95-11		1,300	2-6-95	1,300	3-28-95		
National Institutes of Health								
National Center for Research Resources	R95-12		1,000	2-6-95	1,000	3-28-95		
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R95-13		439,200	2-6-95	439,200	3-28-95		
Congregate services	R95-14		37,000	2-6-95	37,000	3-28-95		
DEPARTMENT OF JUSTICE								
Federal Prison System								
Salaries and expenses	R95-26	28,037		5-2-95				
DEPARTMENT OF LABOR								
Bureau of Labor Statistics								
Salaries and expenses	R95-15		1,100	2-6-95	1,100	3-29-95		
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R95-16		13,216	2-6-95	13,216	3-31-95	6,563	P.L. 104-6
Office of the Secretary								
Payments to air carriers (Airport and airway trust fund)	R95-17		7,680	2-6-95	*			
Federal Aviation Administration								
Grants-in-aid for airports (Airport and airway trust fund)	R95-27	94,000		5-2-95				

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance	R95-18		11,642	2-6-95	6,835	2-6-95		
	R95-18A		-6,835	2-6-95	4,807	3-28-95		
Water infrastructure financing	R95-18B		3,200	2-6-95	3,200	3-28-95		
Research and development	R95-18C		3,635	2-6-95	3,635	3-28-95		
	R95-18C-1		Language	2-22-95				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Mission support	R95-19		1,000	2-6-95	1,000	3-28-95		
Construction of facilities	R95-20		27,000	2-6-95	27,000	3-28-95		
Space flight, control, and data communications	R95-28	10,000		5-2-95				
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R95-21		15,000	2-6-95	15,000	4-6-95		
OTHER INDEPENDENT AGENCIES								
Chemical Safety and Hazard Investigation Board								
Salaries and expenses	R95-22		500	2-6-95	500	3-28-95		
National Science Foundation								
Academic research infrastructure	R95-23		131,867	2-6-95	131,867	3-27-95		
TOTAL RESCISSIONS		**132,037**	**1,067,787**		**1,101,942**		**71,563**	

ATTACHMENT D
Status of FY 1995 Deferrals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6-1-95
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D95-1	53,300		10-18-94					
	D95-1A		1,173,948	12-13-94	891,978			2,525	337,796
Foreign military financing grants	D95-2	3,139,279		10-18-94	1,821,280				1,317,999
Foreign military financing program account	D95-3	47,917		10-18-94	42,774				5,143
Military-to-military contact program	D95-4	2,000		10-18-94					2,000
Agency for International Development									
International disaster assistance, executive	D95-5	169,998		10-18-94	127,830				42,168
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D95-6	7,319		10-18-94					
	D95-6A		2	2-22-95					7,321
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D95-7	105,300		10-18-94	44,814				60,486
TOTAL, DEFERRALS		**3,525,113**	**1,173,950**		**2,928,676**			**2,525**	**1,772,912**

[FR Doc. 95–14760 Filed 6–15–95; 8:45 am]
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federal register

Friday
June 16, 1995

Part VII

The President

Executive Order 12963—Presidential Advisory Council on HIV/AIDS

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

Presidential Documents

Title 3—

The President

Executive Order 12963 of June 14, 1995

Presidential Advisory Council on HIV/AIDS

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the Secretary of Health and Human Services to exercise her discretion as follows:

Section 1. *Establishment.* (a) The Secretary of Health and Human Services (the ''Secretary'') shall establish an HIV/AIDS Advisory Council (the ''Advisory Council'' or the ''Council''), to be known as the Presidential Advisory Council on HIV/AIDS. The Advisory Council shall be composed of not more than 30 members to be appointed or designated by the Secretary. The Advisory Council shall comply with the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

(b) The Secretary shall designate a Chairperson from among the members of the Advisory Council.

Sec. 2. *Functions.* The Advisory Council shall provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. The functions of the Advisory Council shall be solely advisory in nature. The Secretary shall provide the President with copies of all written reports provided to the Secretary by the Advisory Council.

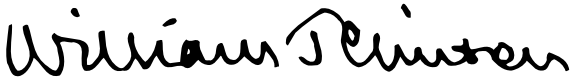
Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Advisory Council with such information as it may require for purposes of carrying out its functions.

(b) Any members of the Advisory Council that receive compensation shall be compensated in accordance with Federal law. Committee members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. section 5701–5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Advisory Council with such funds and support as may be necessary for the performance of its functions.

Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive order, any functions of the President under the Federal Advisory Committee Act that are applicable to the Advisory Council, except that of reporting annually to the Congress, shall be performed by the Department of Health and Human Services, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) This order is intended only to improve the internal management of the executive branch, and it is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, it officers, or any person.



THE WHITE HOUSE,
June 14, 1995.

[FR Doc. 95–14983
Filed 6–14–95; 4:45 pm]
Billing code 3195–01–P

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